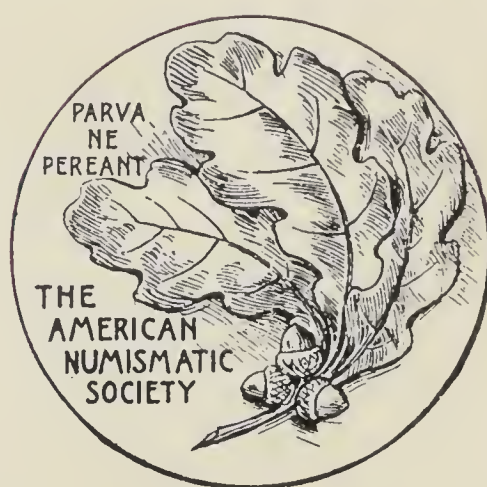




U. S. - Paper Money - R

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*Given A. H. Burnaby*

*With respects of Lysander Spooner*

*1861*

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*(Correction & addition  
by the author)*

NEW SYSTEM  
OF  
PAPER CURRENCY.

BY LYSANDER SPOONER.



BOSTON:

A. WILLIAMS & CO., 100 WASHINGTON STREET.

ROSS & TOUSEY, 121 NASSAU STREET, NEW YORK.

1861.



A

NEW SYSTEM

OF

PAPER CURRENCY.

BY LYSANDER SPOONER.



BOSTON:

PRINTED BY STACY & RICHARDSON,  
No. 11 MILK STREET.

1861.

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Entered according to Act of Congress, in the year 1861,  
By LYSANDER SPOONER,  
in the Clerk's office of the District Court of the United States, for the District  
of Massachusetts.

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## PART SECOND.

ARTICLES OF ASSOCIATION OF A MORTGAGE STOCK  
BANKING COMPANY.



## N O T E .

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THE subscriber believes that the right of property in ideas, is as valid, in the view both of the Common and constitutional law of this country, as is the right of property in material things ; and that patent and copyright laws, instead of superseding, annulling, or being a substitute for, that right, are simply aids to it.

In publishing this system of Paper Currency, he gives notice that he is the inventor of it, and that he reserves to himself all the exclusive property in it, which, in law, equity, or natural right, he can have ; and, especially, that he reserves to himself the exclusive right to furnish the Articles of Association to any Banking Companies that may adopt the system.

To secure to himself, so far as he may, this right, he has drawn up and copyrighted, not only such general Articles of Association as will be needed, but also such other papers as it will be necessary to use separately from the Articles.

Even should it be possible for other persons to draw up Articles of Association, that would evade the subscriber's copyright, banking companies, that may adopt the system, will probably find it for their interest to adopt also the subscriber's Articles of Association ; for the reason that it will be important that Companies should all have Articles precisely, legally, and verbally alike. If their Articles should all be alike, any legal questions that may arise, when settled for one Company, would be settled for all.

Besides, if each Company were to have Articles different from those of others, no two Companies could take each other's bills on precisely equal terms ; because their legal rights, as bill holders, under each other's Articles, would not be precisely alike, and might be very materially different.

Furthermore, if each Company were to have Articles of Association peculiar to itself, one Company, if it could take another's bills at all, could not safely take them until the former had thoroughly examined, and satisfactorily ascertained, the *legal* meaning of the latter's Articles of Association. This labor among banks, if Companies should be numerous, would be intolerable and impossible. The necessity of studying, understanding, and carrying in the mind, each other's different Articles of Association, would introduce universal confusion, and make it impracticable for any considerable number of Companies to accept each other's bills, or to coöperate in furnishing a currency for the public. Each Company would be able to get only such a circulation as it could get, without having its bills received by other banks. But if all banks have precisely similar Articles of



Association, then one Company, so soon as it understands its own Articles, understands those of all other Companies, and can exchange bills with them readily, safely, and on precisely equal terms.

Moreover, if each separate Company were to have its peculiar Articles of Association, it would be wholly impossible for *the public* to become acquainted with them all, or even with any considerable number of them. It would, therefore, be impossible for the public to become acquainted with their legal rights, as bill holders, under all the different Articles. Of course they could not safely accept the currency furnished by the various Companies. But if all the Companies should have Articles precisely alike, the public would soon understand them, and could then act intelligently, as to their legal rights, in accepting or rejecting the currency.

The subscriber conceives that the Articles of Association, which he has drawn up, and copyrighted, are so nearly perfect, that they will never need any, unless very trivial, alterations. In them he has intended to provide so fully for all exigencies and details, as to supersede the necessity of By-Laws. This object was important, not only for the convenience of the Companies themselves, but because any power, in the holders of Productive Stock, to enact By-Laws, might be used to embarrass the legal rights of the bill holders under the Articles of Association.

Besides, as the holders of Productive Stock are liable to be continually changing, any power, in one set of holders, to establish By-Laws, would be likely to be used to the embarrassment, or even injury, of their successors.

It is obviously important to all parties, that the powers of the Trustees, and the rights of all holders, both of Productive and Circulating Stock, should be legally and precisely fixed by the Articles of Association, so as to be incapable of modification, or interference, by any body of men less than the whole number interested.

LYSANDER SPOONER.

*Boston*, 1861.

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PART FIRST.

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A

NEW SYSTEM

— OF —

PAPER CURRENCY.

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CHAPTER I.

OUTLINE OF THE SYSTEM.

THE principle of the system is, that the currency shall represent an *invested* dollar, instead of a specie dollar.

The currency will, therefore, be redeemable by an invested dollar, unless the bankers *choose* to redeem it with specie.

Theoretically the capital may be made up of any property whatever. But, in practice, it will doubtless be necessary, in order to secure public confidence in the currency, that the capital should be property of a fixed and permanent nature, liable to few casualties and hazards, and yielding a constant, regular, and certain income, sufficient to make the PRODUCTIVE STOCK, hereafter mentioned, worth ordinarily par of specie in the market.

The best capital of all will probably be mortgages; and they may perhaps be the only capital, which it will ever be expedient to use.

This capital is to be put into joint stock, held by Trustees, and divided into shares, of one hundred dollars each, or any other sum that may be thought best.

This Stock may be called the *PRODUCTIVE STOCK*, and will be entitled to the dividends.

The dividends will consist of the interest on the mortgages, and the profits of the banking.

Another kind of Stock, which may be called *Circulating Stock*, will be created, *precisely equal in amount* to the *PRODUCTIVE STOCK*, and divided into shares of *one dollar each*.

This *Circulating Stock* will be represented by certificates, scrip, or bills, of various denominations, like our present bank bills—that is to say, *representing one, two, three, five, ten, or more shares, of one dollar each*.

These certificates, scrip, or bills of the *Circulating Stock* will be issued for circulation as a currency, by discounting notes, &c., as our bank bills are now.

This *Circulating Stock* will be entitled to no dividends; and its value will consist wholly\* in its title to be received, at its nominal value, in payment of debts due to the bank, and to be redeemed by *PRODUCTIVE STOCK*, unless the bankers *choose* to redeem it with specie. In law, the *Circulating Stock* will be in the nature of a lien upon the *PRODUCTIVE STOCK*.

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Such are the general principles of the system.

The following provisions, although perhaps not essential to the system, will yet serve to keep the currency at a uniform value, and make the system operate without friction.

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The original owners of the *PRODUCTIVE STOCK*, and all who hold it through *purchase* from them, (instead of by transfer in redemption of bills,) may be called *PRIMARY STOCKHOLDERS*.

\* With a single exception, (provided for in Article XXVII, of the Articles of Association,) not affecting the general rule.

Those, who hold PRODUCTIVE STOCK, by transfer in redemption of bills, may be called *Secondary Stockholders*.

All the resources of the bank—that is, the interest on the mortgages, and the banking profits—should be pledged to pay the *Secondary Stockholders* precisely six per centum per annum (or such other per centum as the Articles of Association may fix for them to receive) on their Stock; *no more, no less*. After these dividends shall have been paid to the *Secondary Stockholders*, the remaining dividends should be divided among the PRIMARY STOCKHOLDERS—*whether such dividends shall be more, or less, than those received by the Secondary Stockholders*.

The effect of securing to the *Secondary Stockholders* precisely six per centum (or any other given per centum) on their Stock, will be to make the *bills* represent, *to the public*, either invested capital, yielding precisely six per centum per annum (or precisely any other per centum, which it may be designed to represent) *or specie*; because the bills may, at pleasure, be converted into such capital, unless the bankers *prefer* to redeem them with specie.

Whenever PRODUCTIVE STOCK shall have been transferred, in redemption of bills, the bankers will have the right to buy it back, at pleasure, on paying its face in specie, with interest, (or dividends,) at the prescribed rate, for the time it shall have been in the hands of the *Secondary Stockholders*.\*

It may be desirable, for various reasons, that the currency, representing the invested dollar, should, at all times, be, as nearly as may be, on a par with the specie dollar; neither rising above, nor falling below it, in value. This object, nearly enough for all practical purposes, can be accomplished in this way, to wit:

The rate of dividend, secured to be paid to the *Secondary Stockholders*, on their PRODUCTIVE STOCK, should be fixed so high as to make that Stock worth, *in their hands*, par of specie.

\* See Article XIX, of the Articles of Association.



(Under an abundant currency, such as this system would furnish, six per centum would probably be sufficient for this purpose). This would keep the bills *up* to par with specie; because they could, at pleasure, be converted into either PRODUCTIVE STOCK, or specie.

On the other hand, the facts, that the bankers may, if they please, redeem their bills with specie, rather than by PRODUCTIVE STOCK, and that they will have the right, at any time, to buy back the PRODUCTIVE STOCK, from the *Secondary Stockholders*, by paying its face in specie, will generally keep the bills *down* to par with specie.\*

So long as the banking business shall yield sufficient profit to pay expenses, and the PRODUCTIVE STOCK shall remain in the hands of the *original* owners, <sup>mortgages</sup> there will be no necessity for the interest on the mortgages being paid; because what would be paid in by each Stockholder as interest, would come directly back to him as dividend. The payment of the interest *to* the bank, and of the dividends (so far as they shall be made up of such interest) *by* the bank, will therefore be merely nominal transactions on the books of the bank, without either being actually made.

If an original Stockholder, <sup>mortgage</sup> should *sell* his PRODUCTIVE STOCK outright, it would then be necessary that he should pay his interest.

\* Even if the rate of dividend, fixed for the *Secondary Stockholders* to receive, were such as to make their Stock worth more than par of specie, that would not be likely to make the bills worth more than par of specie; because a person, by returning his bills for redemption, would not be sure of getting PRODUCTIVE STOCK for them. He might be paid in specie, instead of PRODUCTIVE STOCK.

Furthermore, even if his bills should be redeemed by PRODUCTIVE STOCK, instead of specie, he would not be likely to hold it a very long time, before it would be bought back by the bank, by simply paying its face in specie.

There would, therefore, be likely to be no scramble for bills (in order to get PRODUCTIVE STOCK for them) even though the rate of dividend, fixed for the *Secondary Stockholders* to receive, should be such as to make the PRODUCTIVE STOCK worth, in their hands (supposing they could retain it *a length of time*) more than par of specie.

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If, when any PRODUCTIVE STOCK shall have been transferred, in redemption of the bills, the banking profits should not be sufficient to pay the dividends, to which such *transferred Stock* will always be entitled, it will be necessary for the original Stockholders to pay interest *pro rata* on their mortgages, sufficient, with the banking profits, to pay the dividends on such transferred Stock.

If any original Stockholder (mortgagor) should wish, at any time, to take his capital out of the bank — that is, release his estate from the mortgage — he has only to request the Trustees to cancel an equivalent amount of *his own* PRODUCTIVE STOCK, and also an equivalent amount of *Circulating Stock*. They can then discharge his mortgage, without injustice to any one; and his rights in, and liabilities to, the bank are at an end; he having first paid all dues that may have previously accrued.

Minor details of the system will be seen in the Articles of Association.





Although the banks make no absolute promise to pay specie on demand, the system nevertheless affords a much better practical guaranty for specie payments, than our present system; for these reasons, viz.

1. The banks would be so universally solvent, and so universally known to be solvent, that no runs would ever be made upon them for specie, through fear of their insolvency. They could, therefore, maintain specie payments with much less amounts of specie, than our present banks can.

2. Ninety nine times in a hundred, the alternative redemption would probably be preferred to specie, by the bill-holders. This would still further lessen the amount of specie necessary to be kept on hand.

3. The banks would probably find it for their interest, as promoting the circulation of their bills, to pay, at all times, such small amounts of specie, as the public convenience might require.

4. Whenever specie should not be paid on demand, no dividends could be



paid to the Bankers, until all claims for  
specie, with interest, should have been  
paid in full; that is to say, until all  
Circulating Stock, presented for redemption,  
and not redeemed by Productive Stock,  
should have been redeemed by specie; and  
all Productive Stock, that should have  
been transferred in redemption of cir-  
culation, should have been repurchased,  
by specie, and restored to the original  
holders. (For particulars on this point, see  
Articles of Association, especially Ar-  
ticles 13, 20, 23, 24, 25, 26, 27, 28, and 29).

5. If there should be any suspen-  
sions of specie payments, they would be  
only temporary ones, by here and there  
a bank separately, and not by all the  
banks simultaneously, as now. No gen-  
eral public inconvenience would there-  
fore be felt from that cause.

## CHAPTER II.

## ADVANTAGES OF THE SYSTEM.

1. THE system would furnish, at all times, an abundant currency. It would furnish currency equal to one third, or one half, the value of all the real estate in the country — if so much could be used.

2. The currency would be *stable in value*. The system is capable of furnishing so much currency, that a large demand could be supplied as easily as a small one, and without causing any variation in the market value of the currency, or raising the rate of interest.

The presence or absence of specie in the country, would have no effect, either upon the amount of currency, or upon the stability of its value.

The prices of property would be stable, so far as their stability should depend upon the stability of the currency.

3. The currency would be *solvent*. It would be absolutely incapable of insolvency; for there could never be a dollar of the currency in circulation, without an invested dollar (Productive Stock) in bank, which *must* be transferred in redemption of it, unless redemption be made in specie. All losses, therefore, fall upon the bankers, and not upon the bill holders. If the original Stockholders should all fail — that is to say, if they should be compelled to transfer *all* their Productive Stock in redemption of their circulation — the result would simply be, that the original capital (Productive Stock) would pass, *undiminished*, into the hands of a new set of holders, *who would proceed to bank upon it* (re-issue the bills, and redeem them, if necessary, by the transfer of Productive Stock) *in the same way that their pre-*



*decessors had done.* And if they, too, should lose *all* their Productive Stock (capital) by the transfer of it in redemption of the circulation, the Stock itself would pass, *unincumbered and unimpaired*, into the hands of still another new set of holders, who would bank upon it, as the others had done before them. And this process would go on indefinitely, as often as one set of bankers should fail (lose *all* their Productive Stock). The holders of the Productive Stock, for the time being, would always be the bankers, for the time being. And whenever one set of bankers should have made such losses as to compel a transfer of *all* their Productive Stock, that Stock would pass into the hands of a new set of holders, and the bank, *as a corporation*, would be just as solvent as at first. So that, however badly the banking business should be conducted, and however frequently the *bankers* might fail, (if transferring all their capital, or Productive Stock, in redemption of their circulation, may be called failing,) the bank itself, as a corporation, *could not fail*. That is to say, its circulation could never fail of redemption. Its capital would forever remain intact; forever equivalent to the circulation; and forever subject to a compulsory demand in redemption of the circulation. In this way all losses necessarily fall upon the bankers (in the loss of their Productive Stock) and not upon the bill holders. (See Article XXI, of the Articles of Association.)

4. The solvency of the currency will be *known* by all, both in the neighborhood of the place of issue, and at a distance from it (if the bankers should choose to make its solvency known at a distance). These results will be accomplished in this way.

The mortgages, composing the capital of the bank, will be matter of public record, and every body, *in the neighborhood*, will have the means of judging for himself of the sufficiency of the property holden. If the property should be insufficient, the bank would be discredited at once; for the abundance of solvent currency would be so great, that no one would have any induce-

ment to take that which was insolvent or doubtful. In this way the credit of a bank would be established *at home*.

Its credit *abroad* would be established in this way,—

Suppose a bank, at Chicago, should wish to establish the credit of its bills in New York. All that would need to be done would be to make arrangements with some bank in New York to redeem them.\* And to induce the New York bank to redeem them, it would not be necessary, as now, that the Chicago bank should keep a deposit of specie in New York. All that would be necessary would be to satisfy the New York bank of its (the Chicago bank's) solvency—that is, of the sufficiency of the property holden. This could be done by the New York bank's sending a commission to Chicago to investigate the question. And when the New York bank should have once become convinced of the solvency of the Chicago bank, the credit of the latter is established *forever*. The New York bank would not need to be continually investigating the condition of the Chicago bank; because, under this system, a bank, once solvent, is forever solvent.

It would, therefore, be perfectly easy for banks, in remote parts of the country, to make their bills redeemable in the great commercial centres, or any where else they might please, *without keeping deposits of specie at those points*.

One important result, among others, of this system would be, that when a merchant, from Chicago, for example, should come to New York to make purchases, he would not buy on his own credit; but would get his credit, at bank, in Chicago; bring Chicago bank bills to New York, and make his purchases with them. Or else the bills of New York banks would be so abundant at Chicago, that he would there exchange his Chicago bills for New York bills, and bring the latter home, and exchange

\* The New York bank would not redeem them by paying specie for them, but by receiving them in payment of debts, and by giving its own bills in exchange.



them for goods. Thus all the jobbing business of the country would be done for cash, instead of on credit, as now.

5. The currency would be *cheap* (afforded at a low rate of interest) and for two reasons. 1. Because the capital costs nothing. That is, its use as banking capital costs nothing; because its use as banking capital, does not interfere with its use for other purposes. 2. The system admits of competition limited only by the real property of the country. These two facts would bring the rate of interest, *at all times*, down to the lowest point, at which the simple business of banking could be profitably done.

6. The basis of the currency could not, like specie, be carried out of the country, so as to leave our own people destitute of a currency.

7. The system stands wholly on common law principles; requiring no aid from the government, in the way of charters of incorporation; and (in the United States) constitutionally admits of no prohibition from the government.\*

8. It gives the Stockholders all the benefits of an act of incorporation, so far as to shield them from individual liability. At the same time, it avoids all necessity for privileged legislation. It also avoids all injustice to, and all liability of throwing any losses upon, the bill holders, because they are certain to get the

\* The author does not concede the constitutional power of the State governments to prohibit any kind of banking, that is *naturally* just and lawful. And he fully believes all existing restraints upon private banking to be unconstitutional. But, be they so, or not, it seems plain enough that government has constitutionally no more power to forbid men's selling an *invested* dollar, than it has to forbid the selling of a *specie* dollar. It has constitutionally no more power to forbid the sale of a single dollar, invested in a farm, than it has to forbid the sale of the whole farm.

The currency here proposed is not in the nature of a *credit* currency, (as the word *credit* is now legally understood,) and could not be prohibited on that ground, even if any credit currency can constitutionally be prohibited.

The currency proposed consists simply of *bona fide* certificates of Stock, which the owners have the same right to sell, that they have to sell any other Stocks.

precise thing they bargained for ; that being set apart, and made legally incapable of being applied to any other purpose.

9. The system would be a free one. That is, the right of furnishing currency, instead of being made a legalized monopoly, would be open equally to every man, who had the necessary property.

10. The system would be adapted to distribute credit equally as possible through the community.

11. Currency and bank credits would be so abundant, cheap, and generally diffused, as nearly or quite to supersede all other forms of temporary credit between man and man, and introduce a general system of cash payments. This would be the result, for this reason. The banks could generally, if not always, afford credit cheaper than individuals engaged in trade. The banks would be so numerous, that a man deserving of credit at all, could generally obtain it at bank. And the result would soon come about, that nearly all temporary credit would be obtained at bank, and cash payments would be made in nearly all transactions between individuals. The hazards of trade would thus be greatly diminished ; every man's business would stand on its own basis ; his solvency or insolvency would be an independent matter, instead of being complicated, as now, with the solvency or insolvency of so many others.

12. It would tend to diversify industry to the greatest possible extent, by affording the best possible facilities, which a mere currency system can furnish, for engaging in the production of all new commodities as fast as they should be invented.

13. The system would liberate specie for the uses of international commerce.

14. The system would greatly enhance the value of real estate, not so much by reason of the banking profits derived from it, as of the activity it would give to agricultural, manufacturing, and commercial industry.

15. The proposed system would tend to graduate the prices of property throughout the country, according to one common



standard. To illustrate this point, we will suppose that, in Massachusetts, an acre of land, which yields a net income of six dollars per annum, over all charges, is worth \$100. Why is it worth \$100? Because the rate of interest, in Massachusetts, is six per centum per annum. The acre of land, therefore, yields the same annual income as \$100, at interest. But, in Illinois, we will suppose, an acre of land, that yields \$12, or \$18, net income per annum, (two or three times as much as the acre in Massachusetts,) is worth but \$100, the same as the acre in Massachusetts. Why is it worth no more? Because the rate of interest, in Illinois, is twelve or eighteen per centum per annum; two or three times more than in Massachusetts. The acre of land, in Illinois, therefore, although it yields two or three times as much income as the acre in Massachusetts, brings only the same price in the market, because it will yield no more annual income than \$100, at interest, in Illinois. But the proposed system, by making currency abundant, and reducing the rate of interest, in Illinois, to nearly or quite the same rate as in Massachusetts, would raise lands, in Illinois, to a price corresponding with the income they yield. It would raise them to substantially the same standard of price with the lands in Massachusetts; so that, if an acre of land yielded \$12, or \$18, net annual income, the market price of the land would be \$200, or \$300, instead of \$100, as now.

In this way, this system, by making currency abundant, and the rate of interest low, throughout the country, would tend to graduate the prices of property by one common standard throughout the country, according to the net income, or real value, of the property.

16. It would benefit the condition of poor men in various ways, to wit: *First*, those who should labor for wages, would receive their wages promptly, and in money (currency). They would thereby be enabled to make their purchases with cash, and thus make them more advantageously than now. *Secondly*, there would be no stagnations in business, by which they would

be thrown out of employment, and compelled to consume their accumulations, and perhaps fall in debt. *Thirdly*, there would be a much greater diversity of industry than now, and as a consequence, all labor would be better paid than now. *Fourthly*, those who should wish to hire capital, and establish themselves in business of their own, would be much better able to do so than now, because when all traffic should be done for cash, it would be much more safe to loan capital to a poor man, than it is now, when he is obliged to give, as well as to get, credit. *Fifthly*, men of wealth would retire, earlier than now, from active business, and make way for, and loan their capital to, younger men; because they could certainly loan their capital more safely than now, and probably more advantageously. By loaning their capital first on mortgage, and thus getting one income from it; and then converting the mortgages into bank capital, and thus getting another income from it, they would probably do better with their capital, than to remain in business. At any rate, the management of their capital would thus be attended with less anxiety and risk, than if they were to remain in business themselves.

17. As a standard of value, the currency would be much more uniform than it is now, because a dollar, invested for twenty or thirty years, where it is sure to yield, say, six per cent. income each year — never more, and never less — would obviously maintain a more uniform value than the dollar now does, which brings, say, four per cent. income this year, and ten, fifteen, or twenty next year.

## CHAPTER III.

## SECURITY OF THE SYSTEM.

SUPPOSING the property mortgaged to be ample, the system, as a system, is absolutely secure. That is to say, the currency is absolutely sure of redemption. The capital cannot, in any possible event, be reduced below the amount necessary for the redemption of the entire circulation.

The only question, then, is — what assurances have the public, that the property mortgaged will always be ample?

The answer is, that they have abundant assurances, as follows:

1. The mortgages will all be on record, where any body interested can examine them, and judge for himself whether the property holden is sufficient.

2. Each bank will find it expedient to print a large number of copies of its Articles of Association, including copies of its mortgages. Appended to these copies, may be copies of the certificates of appraisers, as to the value of the property. These certificates, if they come from men of known character and judgment, will be entitled to confidence. Certificates also of the assessed value of the property, on the tax lists of the town, may be appended; and these, coming from disinterested and honest men of good judgment, as the assessors of taxes usually are, will be worthy of reliance.

Copies of the Articles of Association, with these certificates appended, will be sent, by the bank, to other banks, and given to individuals, with whom the bank wishes to establish its credit.

3. The Trustees of a bank will be generally known as men of character and judgment — for otherwise a bank would be discredited at once. If they are thus known, their acceptance of



the office of Trustees, will be a reasonable guaranty for the sufficiency of the property holden; for such men would not be likely to become Trustees, except for a solvent bank.

4. The abundance of undoubted currency would be such, that the public would be under no necessity to take doubtful currency; and therefore doubtful currency could get no circulation at all.

5. Mortgages upon the real property of the country, at one third, or one half, its value, would probably furnish a great deal more currency than could be used. No one company, therefore, could expect to get out a circulation of more than one third, or one half, the value of the property mortgaged. It would be of no use for them, therefore, to mortgage their property for more than that amount. If they should mortgage their property for more, and attempt to get out more circulation, they would thereby discredit their bank, and thus either fail of getting any circulation at all, or certainly fail of getting as much circulation as they might have got, if their property had been mortgaged only for a proper amount. It, therefore, would not be for the *interest* of a banking company to mortgage their property at a higher rate than one third, or one half, its value. And at this rate, the mortgages would be safe for a long series of years, (unless in very extraordinary cases,) because, under a system of abundant currency, real estate would always be rising in value, rather than falling. The mortgages, therefore, would be growing better all the while, instead of growing worse.

6. By the Articles of Association, all the mortgages, which make up the capital of a bank, are made mutually responsible for each other; because, (see Articles XXIX and XXXVII,) if any one mortgage proves insufficient, no dividend can afterwards be paid to any PRIMARY STOCKHOLDER, until that deficiency has been made good by the company. The effect of this provision will be, to make all the founders of a bank look carefully to the sufficiency of each other's mortgages; because no man will be willing to put in a good mortgage of his own, on equal terms with a bad mortgage of another man's, when he knows that his



own mortgage will have to contribute to make good any deficiency of the other. The result will be that the mortgages, that go to make up the capital of any one bank, will be *either all good, or all bad*. If they are all good, the solvency of the bank will be apparent to all *in the vicinity*; and the credit of the bank will at once be established, *at home*. If the mortgages are all bad, that fact also will be apparent to every body *in the vicinity*; and the bank is at once discredited, *at home*.

From all the foregoing considerations, it is evident that nothing is easier than for a *good* bank to establish its credit, *at home*; and that nothing is more certain than that a bad bank would be discredited, *at home*, from the outset, and get no circulation at all.

It is also evident that a bank, that has no credit at home, could get none abroad. There is, therefore, no danger of the public being swindled by bad banks.

7. It would be easy for a *good* bank to establish its credit abroad—for it could do it by establishing its credit with other banks. This it could do, partly by means of its credit at home, and partly by making arrangements with other banks to redeem its bills. In order to do this, it must be at the necessary expense and trouble of satisfying these other banks of its solvency—that is, by furnishing them satisfactory evidence of the sufficiency of the mortgaged property; a thing, that is obviously very easy to be done, if the mortgaged property be really sufficient.

8. In addition to the security of each individual mortgage, and of the mutual responsibility of the mortgages for each other, there is the still further security of all the debts due to the banks; debts a little more than equivalent (by the amount of interest on the loans) to the amount of bills in circulation.

In this connexion it may be added, that under the system proposed; the banking business will be a much safer business than it is now; and consequently the debts due *to* the bank will be a much better security for the solvency of the bank, than such debts now are; because, under a system, which furnishes, at all

times, a constant and ample supply of currency, industry and trade will be subject to none of those revulsions and stagnations, which cause extensive or general bankruptcies; the debtors of banks will all make their sales for cash, instead of giving credit. For these reasons the credits, given by the banks, will obviously be much more uniformly safe than they now are; and consequently the debts, due the banks, will afford a much better security, than they now do, for the solvency of the banks themselves.

9. The banks themselves would act as guardians to the public against frauds by each other. This would be done in this way. Bank A (a solvent bank) would not receive the bills of bank B, unless bank B had first satisfied bank A of its solvency. And bank A would be satisfied only by personal examination of the mortgages of bank B. In this way any unsound bank would be discredited by the surrounding banks, and thus discredited in the eyes of the community.

But it has been said that under the New York free banking law, mortgages are deposited with the State Comptroller, (or Superintendent of Banks,) as security for the redemption of the currency; and that when these mortgages come to be sold, the lands often fail to bring the amount of the mortgage. And the question has been asked, whether, under the system here proposed, the mortgaged property might not prove insufficient, as well as in New York?

The answer is, that the mortgages in New York may have proved insufficient for either or both of two reasons.

1. They may have proved insufficient, because the lands, being sold *for specie, at a time when specie had mostly left the country, could not bring what was not to be had—that is, specie.* But this is no proof that the lands were not, *in ordinary times*, and under an abundant currency, a sufficient security; but only that, when specie has gone out of the country, lands are affected like all other property, and will not, any more than other property, bring their true value *in specie*.



But under the system proposed, the absence of specie would occasion no contraction of the currency, and no depression in the price of lands. And therefore a mortgage, that was sufficient at one time, would be sufficient at all times. *No forced sales would be made*; but the mortgages would run (if only the *interest* were paid) until the final winding up of the bank. If the interest were *not* paid, the bank would take possession, and apply the rents to the payment of the interest. Or, at worst, they would sell the property. And it could always be sold advantageously, because, there never being a scarcity of currency, property in general would never be depressed.

2. The other reason, for the failure of the New York mortgages, may have been *fraudulent appraisals*.

The facilities for fraudulent appraisals are much greater under the New York system, than they would be under the system proposed, and for these reasons.

Under the New York system, all that is necessary to get a bank in operation, is, that mortgages, satisfactory to the State Comptroller, or Superintendent of Banks, should be deposited with him. And he accepts the mortgages on the simple appraisal of men, appointed by himself, or satisfactory to himself. This being done, the currency is then issued, and the public receive it, *because the State has thus virtually certified that it is well secured*.

Now, it is evident that all that is necessary to get up a swindling bank, under this system, is simply to secure the approval of *one man* — the Comptroller, (or Superintendent of Banks,) who knows nothing of the land himself — to the appraisal of the land mortgaged. If but this one man can either be cheated, or be induced to become himself a cheat, all the other consequences follow; because the currency is then issued under his authority, and is received by the public, on the strength of his virtual indorsement.

Now, as it cannot be a very difficult matter to cheat this *one man*, or perhaps to induce him to become himself a cheat, in

such a case as this, it is evident that the system affords little security for the sufficiency of the mortgages.

But under the system proposed, no such facilities for fraud would exist, because the credit of the bank would not rest upon the certificate of any one man, nor upon any indorsement of the State. The State would not indorse the currency at all, any more than it now indorses the notes or mortgages of private persons. Each bank would, therefore, have to stand on its own merits, subject to the scrutiny of the whole community.



## CHAPTER · I V ·

## PRACTICABILITY OF THE SYSTEM.

THE system is plainly practicable, *provided the currency will pass.*

The only question, then, is, whether the currency will pass? Whether men, if left to do as they please, will buy and sell it, in exchange for other commodities, as they now buy and sell gold and silver coin, and bank notes, in exchange for other commodities?

To answer this question, it is necessary to ascertain what it is, that makes *any thing* pass as a currency.

What, for example, is it, that makes gold and silver coin pass as a currency?

The answer is, that *five* conditions are necessary to make any thing pass readily as a currency. *First*, that the thing should have much value, and yet be of small bulk and weight; *secondly*, that it should be divisible into small parcels; *thirdly*, that the quantity and quality of each of these parcels should be accurately measured, and then reliably marked upon the parcels themselves; *fourthly*, that these parcels should be convenient for being manipulated, counted, transported, &c.; and, *fifthly*, that the currency should have a *publicly known market value*.\*

These are the *only* conditions, that are necessary to make *any thing* pass readily as a currency.

The paper currency proposed — the mortgage stock currency — fulfils all these conditions. *First*, it would have much value in small bulk and weight. *Secondly*, it would be conveniently

\* Diamonds would not answer well as a currency, because, although they have a market value, that value is known only to a few.

divisible into small parcels, that is, parcels as small as one dollar. *Thirdly*, the quantity and quality of these parcels would be accurately measured, and reliably marked upon the parcels themselves. *Fourthly*, the parcels would be convenient for being manipulated, counted, transported, &c. And, *Fifthly*, the currency would have a *publicly known market value*. Its market value, in comparison with other commodities, would certainly be as well known, as is the market value of gold and silver coins, or bank notes.

There is no reason, then, why it should not pass, as a currency — *at its market value* — whatever that may be.

Its market value may be greater or less than that of gold and silver; but this would not prevent its passing, *at its market value*. Indeed the *market value* of any thing is only that value, at which the thing *will sell readily* in the market. So that, to say that a thing has a *market value* — a *publicly known market value* — is equivalent to saying that it *will pass* as a currency, provided it be *convenient* in all other respects.

### *Secondly.*

But would this paper currency be *as much in demand*, in the market, as gold and silver coins now are? That is, would it *sell as readily* as the coins now do, in exchange for other commodities?

To answer this question, we must ascertain *why it is* that the coins are in demand at all, as currency; *why it is* that they have a market value; *why it is* that every man will accept them in exchange for any thing he has to sell.

The solution of these queries is, that the *original, primal source* of all the demand for them, *as currency* — the essential reason why they have a market value, and sell so readily in exchange for all other commodities — is because they are wanted, *to be taken out of circulation, and converted into plate, jewelry, and other articles of use.*

If they were not wanted, *to be taken out of circulation*, and wrought into articles *of use*, they could not circulate at all, *as a currency*. No one would have any motive to buy them; and no one would give any thing of value in exchange for them.

The reason of this is, that gold and silver, *in the state of coin, cannot be used*.\* Consequently, in the state of coin, they *produce nothing to the owner*. A man cannot afford to keep them, *as an investment*, because that would be equivalent to losing the use of his capital. He must, therefore, either exchange them for something that he can *use* — something that will be productive — yield an income; or else he must convert them into plate, jewelry, &c., in which form he can *use* them, and thus get an income from them.

It is, therefore, only when gold and silver coins have been wrought up into plate, jewelry, &c., that they can be said to be *invested*; because it is only in that form, that they can be *used*, be productive, or yield an income.

The income, which they yield, *as investments* — that is, the income, which they yield, when *used* in the form of plate, jewelry, &c., — is yielded *mostly* in the shape of *luxurious pleasure* — *the pleasure of gratified fancy, vanity, or pride*.

The *amount* of this income we will suppose to be six per centum per annum, on their whole value. That is to say, a person, who is able, and has tastes that way, will give six dollars a year for the simple *pleasure of using* one hundred dollars worth of plate, jewelry, &c.

*This six dollars worth of pleasure*, then, or six dollars worth of gratified fancy, vanity, or pride, is the *annual income* from an *investment* of one hundred dollars in gold and silver plate, jewelry, &c.

This, be it noticed, is the *only income*, that gold and silver are capable of yielding; because plate, jewelry, &c., are the *only* forms, in which they can be *used*. So long as they remain

\* The sale of them, *as a currency*, is not a *use* of them; any more than the sale of a horse is a *use* of the horse.



in coin, they cannot be *used*, and therefore cannot yield an income.

It is, then, only this six per centum annual income — *this six dollars worth of pleasure* — which gold and silver yield, *as investments*, that is really the cause of all the demand for them, in the market, and consequently of their passing as a currency.

This fact may now be assumed to be established, viz.: that the origin of all the demand for gold and silver, *as a currency* — the essential reason why they have a market value, and sell so readily in exchange for other commodities — is because they are wanted, *to be taken out of circulation, and converted into plate, jewelry, &c.*, in which form *only* they are capable of being *used*, or of yielding an income.

By this it is not meant that every man, who takes a gold or silver coin, *as currency*, takes it because he *himself* wants a piece of gold or silver plate, or jewelry; nor because he *himself* intends or wishes to work it into plate or jewelry; for such is not the case, probably, with one man in a thousand, or perhaps one man in ten thousand, of those who take the coin. Each man takes it, *as currency*, simply because he can sell it again. But he can sell it again solely because some other man wants it, or because some other man will want it, in order to convert it into articles *for use*. He can sell it, solely because the goldsmith, the silversmith, the dentist, &c., will *sometime* come along and buy it, *take it out of circulation*, and work it up into some article *for consumption* — *that is, for use*.

This *final consumption, or use*, then, is the mainspring that sets the coins in circulation, and keeps them in circulation, as a currency.

It is solely the consumption, or use, of them, *in other articles than currency*, that creates any demand for them, in the market, *as currency*.

It is, then, only the value, which gold and silver have, *as productive investments, in articles of use, in plate, jewelry, &c.*, that creates any demand for them, and enables them to pass, *as a currency*.



This fact, then, being established, the following proposition is an inevitable deduction from it, viz.: that the *activity* of the demand for gold and silver coins, *as a currency*, depends wholly upon the activity of the demand for them, *to be taken out of circulation*, and converted into plate, jewelry, &c.

To illustrate this point, let us suppose a community of one million of people, shut out from the rest of the world, having among them one million dollars of gold and silver coins, and having no gold or silver among them, except in coins. If but *one dollar* of these coins were to be taken out of circulation each year, and converted into plate, jewelry, or other articles of use, the demand for all the remaining coins, *as a currency*, would wholly, or substantially, cease. And why? Solely because the stock of coins on hand, (or the stock of gold and silver on hand,) would be equal to a million years' consumption. The consequence obviously would be that gold and silver would have no value in the market; any more than cotton or iron would have a value in the market, if there were a million years' stock on hand.

But if, instead of one dollar, an hundred thousand dollars were annually taken out of circulation, and converted into plate, jewelry, or other articles of use, (even though their place were annually supplied by an equal amount taken from the mines,) this demand for the coins, *to be taken out of circulation*, would create a corresponding demand for them, *as a currency*. And why? Solely because the stock of gold and silver on hand, would be equivalent only to ten years' consumption. This would give them a value, where before they had none; and enable them to circulate, as a currency, where before they could not.

Thus it is evident that the whole demand for gold and silver, *as a currency*, depends upon the demand for them for consumption, *as plate, jewelry, &c.* And consequently the *activity* of the demand for them, *as a currency*, depends upon the *activity* of the demand for them, *for consumption*. In other words, the activity of the demand for the coins, *as a currency*, depends upon the activity of the demand for them as *investments*, in articles of use.

And what is true of the coins, would be true also of the paper currency proposed. The activity of the demand for the Circulating Stock, *as currency*, would be just in proportion to the demand for the mortgages, or Productive Stock, *as investments*. As the coins would be in demand, as a currency, solely in proportion to the demand for them, to be *invested* in plate, jewelry, &c., so the paper currency would be in demand, as currency, solely in proportion to the demand for it, to be *invested* in mortgages, or Productive Stock. The demand for these two different kinds of *investments*, would govern the demand for the two different kinds of currency. .

Now, in order to determine whether the paper currency proposed *would be in as much demand*, in the market, as the gold and silver coins circulating in competition with it, we have only to determine whether the community at large would wish to make annually as many *investments, in the mortgages proposed, as they would in plate, jewelry, &c.* Or, perhaps, rather, the true question is, whether as *large a proportion* of the whole stock of paper currency, in the market, would be annually taken out of circulation, and invested in the mortgages, as of the gold and silver coin in plate, jewelry, &c. If such would be the case, then one kind of currency would be just as much in demand as the other.

To illustrate this point, suppose that, in this country, one hundred millions of coin, and one hundred millions of the proposed paper currency, were in circulation, in competition with each other. And suppose that ten millions of the coin — that is, ten per centum of the whole stock of coin — were annually wanted to be taken out of circulation, and *invested in plate, jewelry, &c.*; and that ten millions also of the paper currency — that is, ten per centum of the whole stock of paper currency — were annually wanted, to be taken out of circulation, and *invested in the mortgages*, the market demand for these two kinds of currency would be precisely alike.

Or suppose that *one hundred millions* of coin, and *five*



*hundred millions* of the paper currency, were in circulation, in competition with each other; and that *ten millions* of the coin (ten per centum of the whole stock of coin) were annually wanted, to be taken out of circulation, and *invested* in plate, jewelry, &c., and that *fifty millions* of the paper currency (ten per centum on the whole stock of paper currency) were annually wanted, to be taken out of circulation, and *invested* in mortgages, the demand, in the market, for each of the two kinds of currency would still be precisely equal, in point of activity. That is to say, one kind of currency would circulate just as readily as the other.

On this theory, it is very easy to settle the question of the comparative demand for the two different kinds of currency; for, although the amount of paper currency might perhaps be fifty or an hundred times greater than the amount of gold and silver, yet the demand for the mortgages (Productive Stock) as *investments*, would probably be fifty or an hundred times greater than the demand for plate, jewelry, &c., as *investments*.

The reason, why there would be this greater demand for the mortgages, as *investments*, is, that they would yield their income, in money, or currency, which could be appropriated to the supply of any and all the various necessities, wants, comforts, and pleasures, which money can buy; while the plate, jewelry, &c., as *investments*, yield their income mostly in the shape of a luxurious pleasure, which most persons do not highly appreciate, and which few persons can indulge in, to any considerable extent, without being compelled to pinch themselves in the matter of common necessities and comforts.

Mankind, therefore, desire to have the great bulk of their property invested so as to yield an income in money; and only a very small portion of it in such articles of fancy as plate, jewelry, &c.

Under these circumstances, it is probable that if the paper currency were in circulation in competition with the coin, in the proportion of fifty or an hundred to one, the paper would be just



as acceptable a currency as the coin; would be just as much in demand; would exchange just as readily for other commodities; and would equally well maintain its value in the market.

*Thirdly.*

Would the mortgages, or *Productive Stock*, be so desirable a form of investment, as to invite capital into it, and thus create a demand for the currency, with a view to having it redeemed by *Productive Stock*?

The answer is, that the *Productive Stock* would be a desirable investment, for the various reasons of security, profit, and convenience.

1. As regards security, no kind of investment would exceed it.

2. As regards profit, the *Productive Stock* would pay two different dividends — one to *Primary* holders, and the other to *Secondary* holders.

The dividends to *Primary Stockholders* would be made up of the interest on the mortgages, and the profits of the banking. The rate of these dividends, therefore, will depend upon the rate of interest on the mortgages, and the amount of banking profits.

Probably the best rate of interest for the mortgages to bear, would be *seven* per centum. This would probably be sufficient to make the *Productive Stock*, in the hands of *Primary* holders, *worth more than par of specie*, even though there should be no profits at all from the banking business. But if there should be profits from the banking business, they would go to swell the dividends. So that the dividends to *Primary Stockholders* would never be less than *seven* per cent. so long as the banking business should simply pay expenses; and they would rise above that rate just in proportion to the banking profits. There can, therefore, be no doubt of the desirable character of the *Productive Stock*, as investments, in the hands of *Primary* holders.

In the hands of *Secondary* holders, the *Productive Stock* would pay an unvarying rate of dividend, fixed by the Articles of Association.

The currency would represent the *Productive Stock*, in the hands of *Secondary* holders, and not in the hands of *Primary* holders; because the holders of the currency, by returning it for redemption, could generally expect to make themselves only *Secondary* holders of the *Productive Stock*. They could rarely expect to become *Primary* holders; and, therefore, would not return the currency for redemption, with that view.

Probably *six* per centum would be the best rate of dividend, to be fixed for the *Secondary* Stockholders to receive; for that is probably the rate, that would put the currency most nearly on a par with specie. If the rate were fixed at *seven* per cent., the *Productive Stock*, in the hands of *Secondary* holders, would be worth *more than par of specie*; and the consequence would be, that the currency would be returned for redemption, in the hope to get *Productive Stock*, rather than specie. And thus the currency could not be kept in circulation. On the other hand, if the rate of dividend, for the *Secondary* Stockholders, were fixed at only *five* per cent., that might prove insufficient to make the currency worth par of specie. Therefore *six* per cent. is likely to prove a better rate than either *five* or *seven*.

Supposing, then, the rate of dividend, for *Secondary* Stockholders to receive, to be fixed at *six* per cent., the investment would be sufficiently inviting to make the currency worth par of specie. It would certainly be sufficient to attract much capital, as every day's observation attests. As a six per cent. stock, it would stand on a par with United States stocks, and State stocks, (bearing six per cent. interest,) which are, at nearly all times, worth par of specie, and oftentimes more than par of specie, in the market.

3. As regards convenience, the *Productive Stock* would be equal to any in the market; especially in the hands of *Secondary* holders. It being in shares of, say, one hundred dollars each,



and its income (in the hands of *Secondary* holders) being precisely fixed, its value is precisely known. The stock is, therefore, in as merchantable form as capital can be invested in. It is in as merchantable form as United States stocks, or State stocks, (bearing fixed rates of interest,) which are nearly or quite as merchantable as bank bills themselves.

The objections, heretofore entertained against mortgages, as an investment, have no application whatever to stocks of this kind. Those objections have been as follows :

1. The inconvenience of making the investment, owing to the necessity of investigating titles, making valuations, &c., all of which processes are attended with delay, and with some danger of mistakes or frauds. In these bank stock mortgages, these delays and dangers would all be avoided ; because the soundness of the titles, and the moderation of the valuations, would be notorious. It would be a necessity, on the part of the banks, to make them so, as a condition precedent to the banks' getting any circulation for their currency.

2. A second objection, to mortgages heretofore, has been, that each mortgage was in bulk, and could not be broken. It was, therefore, in a great degree, *an unmerchantable article* ; because it was not always, nor even often, an easy thing to find a person wishing to make an investment of that particular amount. This objection, too, which was really a very serious one, is entirely obviated in the case of the *Productive Stock* ; for here the mortgages are divided into shares of \$100, or any other amount that may be desired ; and thus put in as merchantable form, as any investment can possibly be in.

3. A third objection, to mortgages heretofore, has been, that neither the interest nor the principal of the investment could be realized from them (unless the debtor should choose to pay) without a tedious delay ; taking possession of the premises ; looking after rents and profits ; giving the mortgagor time (perhaps a long time) for redemption ; or incurring delay, expense, and trouble in advertising the premises, and selling them. In



the case of the *Secondary* holders of *Productive Stock*, every objection of this kind is obviated, for substantially the whole resources of the bank (which are morally certain to be ample) are pledged to the payment of the dividends promptly. And even as to the *Primary* holders, they are not likely to be personally troubled in the matter, for the Trustees attend to all business matters in relation to the mortgages. The only one, of the inconveniences just mentioned, that the *Primary* Stockholders are ever likely to be subjected to, is a delay in receiving some portion of their dividends, if the mortgagors should not be prompt in the payment of interest. But this would so rarely occur as to prove a very slight objection, if any, to the investment.

The result, then, obviously would be, that these stocks would be of the very first class, as investments. Their safety, their profit, and their merchantable character, would all conspire to make them preëminently desirable. And the consequence would be that the demand for them would be sufficient to make the currency constantly in demand, as a means of obtaining them.

Under an abundant currency, such as the system would furnish, and under the low rates of interest that would follow, the *Productive Stock* would probably be much more in demand than stocks, paying similar dividends, now are ; because now, a very large amount of loanable capital is kept invested in promissory notes, and other personal securities, on account of their paying a better interest than stocks. But under the system proposed, the banks would be so numerous, and the rate of interest at them so low, that temporary loans would all be obtained at the banks, rather than in the street ; and the capital, which is now loaned in the street, would then, as the best alternative, seek investment in bank stocks.

*Fourthly.*

The next question is, would the paper currency proposed, maintain a par value with specie?

This question has already been discussed somewhat; but a few more words need to be said.

We have already seen that the paper would circulate, *at its true value, whatever that might be*. It is, nevertheless, an important question, whether its value, in the market, would be equal to that of specie?

The answer is, that if the rate of dividend, paid to *Secondary* holders of *Productive Stock*, should be six per cent., that would be sufficient to make the currency, *at most times*, if not at all times, worth par of specie. If it should not be at all times, it would be because the market value of specie would fluctuate more than that of the paper; thereby proving that the paper was the most uniform standard of value.

The paper currency could never rise *above* the value of specie; because the banks would have the right to redeem their circulation with specie, if they should so please.

If, therefore, there should ever be a difference between the value of the paper, and that of specie, it must be either because the specie would stand *constantly* above the paper, or because it would *occasionally* rise above it.

Whether the value of specie would stand *constantly* above that of the paper, would depend upon the rate of dividend secured to the *Secondary* holders of the *Productive Stock*. If this rate should be six per centum, that would certainly be sufficient to make the currency worth as much as specie, *at times*; because there are times, when there is plenty of specie to be loaned at that rate.

The only remaining question, then, is, whether the specie would *occasionally* rise in value above the paper? The answer is, that it would very rarely, if ever; and for this reason, viz.:

that the supply of paper would always be so abundant and constant, that it is probable, if not certain, that *none* of those scarcities or contractions, in the currency, which alone cause a rise in the price of specie, would ever occur. And if they never should occur, the paper would *always* be on a par with specie. If, however, the specie should ever stand above the paper, that would only prove, not that the paper had fallen, but that the specie had risen. In other words, it would prove that the fluctuation was in the specie, and not in the paper; and, consequently, that the paper was the least variable standard of value.

Under these circumstances, the paper would constitute nearly all the currency in circulation (unless for sums below one dollar). It would be the only currency loaned by the banks. It would be a legal tender in payment of all debts due the banks. And it would be sufficient for all cash purchases and sales between man and man. And if an individual should want specie for any extraordinary purpose — as, for exportation, for example — he would buy the specie as merchandize, paying the difference between that and the paper.

Still, specie would probably, *at all times*, be more abundant, *as a currency*, in proportion to the demand, than it is now; because it would be so much less needed. The supply would be greater, in proportion to the demand, than now, because the greater supply of paper would supersede the necessity for, and the use of, specie, as a currency.

If the proposed paper currency should be introduced throughout the world, (as it sooner or later would be, if found to be essentially better than any other system,) the coins would become superabundant, unless a greater proportion of them should be consumed in the arts, than now. And gold and silver, whether in coin or not, if they now stand above their value for uses in the arts, would fall *to* that value, and there remain, as they ought.



*Fifthly.*

Could the proposed system be introduced in competition with the existing system?

Yes, for various reasons, as follows:—

1. The proposed system would meet with no material opposition from any quarter, unless from the stockholders in the existing banks. Would it from them? No; because it would probably subserve the interests of four fifths, or nine tenths, of them, better even than the existing system. Let us see.

The stockholders of the present banks are made up of two classes, viz.: those who hold their stock in order to lend money, and those who hold it in order to borrow money.

Both of these classes would *probably* be benefitted, rather than injured, by the adoption of the new system.

Those, who have money to lend, could probably do better with it, by investing it first in a mortgage, and thus getting one income from it; and then using the mortgage as bank capital, and thus getting another income from it.

Their capital would thus be more *safely* invested than it is now; and would probably yield a larger income.

Those, who own bank stock, in order to borrow more than they lend, would probably do better than they do now, because, *first*, they would keep their own capital wholly in their own business; and, *secondly*, if they needed more, would easily borrow it (if worthy of credit) on account of the abundance of banks, that would be seeking borrowers. Thus they would be as well supplied with capital as now, and with less risk and trouble; because they would borrow only what they needed over and above their own capital; and this they would do directly, and without complicating their business, as now, with that of a bank, by becoming stockholders, and being compelled to look after, and take the risks of, all the business of the bank.

Another reason, why the stockholders in the present banks would be benefitted by the new system, is, that very many of these stockholders are large owners of real estate. The new system, by enabling the owners of real estate to get an income from it, as banking capital, and still more by furnishing increased facilities for agriculture, manufactures, and commerce, would greatly increase the value of real estate in general. This increased value, given to real estate, would be of more importance to the owners thereof, than any income or advantage, derived by them from the present system of banking, over those to be derived from the proposed system.

The opposition to the new system, then, (if any there should be,) on the part of stockholders in the present banks, would be an opposition of prejudice, and not of interest; for there are few or no stockholders in the present banks, who would not derive greater advantages from the new system, than from the present one.

2. The new currency could be introduced (brought into circulation) in competition with the existing paper currency, for the further reason, that, if the existing banks should receive the currency of the new banks, *at par*, the currency of the new banks would thus be enabled to circulate, in the community, on a par with that of the present banks. On the other hand, if the present banks should not receive, *at par*, the currency of the new banks, the new banks and their friends would systematically, and to the extent of their ability, run upon the existing banks for specie; and thus compel them to suspend payments in specie. And when the existing banks should have suspended payment in specie, the new banks would stand better than the present ones, in the estimation of the community; because the existing banks would then offer no redemption of their bills, except by receiving them in payment of debts; whereas the new banks would not only offer that redemption, but also a further redemption in *Productive Stock*.

If the new banks, and their friends, should systematically run



upon the existing banks for specie, the existing banks could not retaliate; because the new banks could redeem with *Productive Stock*, instead of specie, if they should so choose.

Thus the new banks, by drawing specie from the existing banks, could pay specie, *to the public*, as long as the existing banks could pay it; and thus the new banks would put themselves on a par with the existing banks, so far as paying specie, *to the public*, should be concerned. But the difference between them would be, that the present banks would be *compelled* to pay specie to the new banks; but the new banks would not be compelled to pay specie to the existing banks.

This advantage, which the new banks would have over the existing ones, would enable the new banks to coerce the existing ones, either into a suspension of specie payments, (when the new ones would stand better than their rivals,) or else into receiving the currency of the new banks at par—in which case the new banks would stand at least as well as the existing ones.

3. The new banks would have an advantage over the existing ones, in introducing their currency into circulation, by reason of the fact that, inasmuch as their capital would cost them nothing, (they not being obliged to keep any considerable amount of specie on hand,) they would be able to lend money at a lower rate of interest.

4. The currency of the new banks would go into circulation, for the further reason, that every body would prefer it, (the currency,) on account of its superior safety, convenience, and merchantable character, *to the credit of private persons*. This preference would be sufficient to bring it into use in substantially all those purchases and sales, which are now made on credit. And if the currency were to go into use *only to that extent*, it would be a success. But if it were to go into use to that extent, it would obviously go into use to a still greater extent, and supersede, wholly or partially, the existing currency, even in those purchases and sales, which are now made for cash.

Doubtless nine tenths, and perhaps nineteen twentieths, of all



the persons, who now get credit, get it elsewhere than at the banks; in fact, never go to a bank for credit. Yet these persons are worthy of credit, as is proved by the fact that they get it of private persons, by purchasing commodities on credit. It would be far better for them to get their credit at bank, and make their purchases for cash, for they would then make them much more advantageously. All this class of persons, therefore, could be relied on to introduce the new currency. And they would have no difficulty in introducing it—that is, in making their purchases with it—because it would be preferred to their private credit, even by those who now give them credit.

5. Under the existing system, when the banks suspend specie payments, we see that their bills not only continue to circulate, but that they maintain a value, in the market, *very nearly on a par with specie*. Why is this? It is principally, if not solely, because the bills of each bank are a legal tender in payment of any debts *due to that bank*. Inasmuch as the public always owe a bank more (by the amount of interest on loans) than the bank owes the public, there is sure to be a demand for all the outstanding bills of a bank, to pay the debts due to the bank—provided the debts due to the bank be solvent. It is this fact, that keeps the bills of the bank so nearly on a par with specie. That is, the bills are worth *very nearly* dollar for dollar, *because they will pay debts to the banks, dollar for dollar, which would otherwise have to be paid in specie*.

This fact, in regard to the circulation of the bills of suspended banks, under the existing system, sufficiently demonstrates that the paper currency now proposed, would not only circulate, but that it would maintain a value very nearly, if not quite, on a par with specie; because it would not only be a legal tender, dollar for dollar, for all debts due to the banks, but would also be redeemable in *Productive Stock*, which would always maintain, very nearly or quite, a par value with specie, in the market. In this latter respect (of being redeemable by *Productive Stock*) the proposed currency would have a clear, and very important,

advantage over the bills of suspended banks, which now circulate, and maintain their value nearly on a par with specie. There is, therefore, no ground for saying that the new currency would not circulate, if it were offered, when we see that a far less safe, less redeemable, and less desirable currency, to wit, the bills of suspended banks, under the present system, do not only circulate, but maintain their value so nearly on a par with specie.

6. It may be supposed, at first view, that merchants, especially importers, might reasonably object to the proposed currency, on the ground that their interests require that the currency of a nation be such as can be converted into specie, whenever they (the merchants) may have occasion to export specie.

Admitting, for the sake of the argument, that the merchants might suffer some inconvenience of this kind, the effect would only be to make them more careful to keep the imports within the exports of the country. And this benefit to the country would counterbalance a thousand fold any inconvenience to the merchants.

The merchants have no claim that the whole country shall depend, for a currency, upon a commodity, or commodities, like gold and silver, which the merchants can at pleasure carry out of the country, leaving the nation destitute of a currency. And it is nothing but suicide for a people to depend upon such commodities for a currency.

Under the present system, whenever the balance of trade is much against us, the merchants export specie in such quantities as to cause sudden and severe contractions in the currency, a great reduction in the price of commodities relatively to specie, (that is, a great rise in the price of specie,) general bankruptcy among persons in debt, general stagnation in industry and trade, and immense distress and ruin on every hand. This state of things checks importations for a while, until the balance of trade turns in our favor; when the specie returns, currency expands, credit revives, industry and trade become active, and, for a time, we have what we call prosperity. But in a few years, the



merchants again export the specie, and the same catastrophe is acted over again. And such must continue to be our experience, until our present vicious system of currency and credit shall be corrected. This no one seems to doubt.

Certainly such evils are not to be endured by a whole nation, from no motive but to maintain a currency, which the merchants can export, whenever they shall have imported more goods than the legitimate exports of the country will pay for.

It is the proper function of merchants to conform their business to the interests of the people, in the matter of currency, as much as in the commodities bought and sold with and for it. And it would be as legitimate for the merchants, instead of supplying the people with such commodities as the latter desire, to dictate to them what they may, and may not, buy, as it is for them (the merchants) to dictate to the people what currency the latter shall use.

It is the legitimate function of merchants to buy such commodities as the people have to sell, and to sell such as the people wish to buy. So far as merchants do this, they are a useful class. And the principle applies as well to the currency, that is to be bought and sold, as to any other commodities. And, as matter of fact, whatever this principle requires of merchants, they readily acquiesce in. They adapt themselves at once to any system of currency, that happens to prevail for the time being. And certainly no class will more eagerly welcome any system of banking, that will furnish them, at all times, with abundant credit, and abundant currency, and cash payments in trade; for such a system would be a guaranty, to them, of a safe, constant, and profitable traffic, in the place of the present fitful, chaotic, and perilous one, in which so many of their number are being continually wrecked.

So far as the export of specie is concerned, probably not one merchant in a hundred — perhaps not one in a thousand — has the least interest in it. A currency, that will pay their bank notes, is substantially all that, as a class, they demand, or desire.



But, in truth, the system would favor, instead of injuring, the interests even of those few merchants who occasionally do export specie; for it would put at their disposal nearly all the gold and silver of the country, for exportation, or any other purpose. That is to say, the merchants could export nearly all the gold and silver, without affecting our home currency; and consequently without disturbing industry and trade. And this is one of the great merits of the system. The presence or absence of specie in the country would not be known by its effects upon the general body of currency.

If the paper currency, now proposed, were introduced throughout the world, gold and silver would enter very little into the internal commerce of nations. They would go back and forth between nations, to settle balances; and would be found, in large quantities, in seaports as merchandize. And merchants would purchase them for export, as they would any other commodities.

7. The system proposed would obviously tend to the concentration of specie, in large quantities, in the seaports. This would enable the banks, in the seaports, to pay specie, if it should be at all necessary. And this would enable the banks, in the seaports, to furnish a specie paying currency *for the interior of the country*, when the banks themselves, in the interior, would not pay it. The advantage of circulation, which the seaport banks might thus obtain over the banks of the interior, would be great enough to compensate for any little trouble it might be for the former to pay specie. In fact, this interior circulation might very probably become so extensive, as to be a source of great profit to the seaport banks.

If the seaport banks should send their currency, in large quantities, into the interior, the banks of the interior would have little need to redeem their currency with specie. It would be sufficient for them to redeem it with the seaport currency.

8. The system is practicable for the further reason, that it can be introduced without the aid of bank charters, or special legislation of any kind. It stands wholly on common law principles;

and companies can go into business under it—as they go into mercantile, manufacturing, or any other business—when it suits their interest or pleasure, without asking the consent of a body of ignorant, conceited, tyrannical legislators, who assume to know what business it is, and what business it is not, best for men to engage in; instead of leaving the wants of mankind to give direction to their industry and capital.

The banks, too, when established, would be free of all special control, oversight, taxation, or interference by the government. As the banks would ask no favors of the government, in the way of charters, monopolies, or otherwise, the government would have no more excuse for specially taxing them, or for sending Commissioners to pry into, investigate, or report their affairs, than it now has for specially taxing the capital, or for sending Commissioners to pry into, investigate, or report the affairs, of merchants, manufacturers, or any other class of persons.

The fact, that the existing system requires special legislation in favor of the banks, (in the shape of charters and monopolies,) and special legislation against them, (in the shape of restrictions of various kinds, the espionage of Commissioners, &c., &c.,)—in short, the fact, that the banking business cannot be left subject only to those general laws, which are applicable to all other kinds of business, is sufficient evidence that the system is a vicious one, and ought to be abolished.

## CHAPTER V.

## LEGALITY OF THE SYSTEM.

ADMITTING, for the sake of the argument — what is not true in fact — that the State governments have constitutional power to forbid private banking, their statutes for that purpose, being contrary to natural right, must be construed to the letter; and the letter of few, if any, of them is such as to prohibit the system here proposed.

Thus Maine prohibits “any drafts, bills, or promissory notes, or other evidences of debt.”

New Hampshire prohibits “bills, notes, checks, drafts, or obligations.”

Massachusetts prohibits “any note, bill, order, or check.”

Rhode Island prohibits “any note, bill, order, or check.”

Connecticut prohibits “any bill of credit, bond, promissory writing, or note, bill of exchange, or order.”

New York prohibits “notes, or other evidences of debt.”

New Jersey prohibits “bills, notes, or other evidences of debt.”

Pennsylvania prohibits “any promissory note, ticket or engagement of credit in the nature of a bank note.”

Ohio prohibits “any note, bill, or other evidence of debt.”

Michigan prohibits “any bills, notes, due bills, drafts, or other evidences of debt.”

Illinois prohibits “any note, or bill.”

Wisconsin prohibits “any bills, or promissory notes, or other evidences of debt.”

Mississippi prohibits “notes, bills, certificates of deposit, or evidences of debt.”



Georgia prohibits "any bills, or promissory notes of private bankers."

The currency proposed — the *Circulating Stock* — comes within the letter of none of these prohibitions. It consists neither of "notes," "promissory notes," "orders," "checks," "drafts," "bonds," "certificates of deposit," "bills of credit," "bills of exchange," "due bills," nor "tickets or engagements of credit in the nature of bank notes."

Although, if it should come into circulation, it may, very likely, in common parlance, and from motives of convenience, be denominated "bills," yet it is not "bills," in any legal sense, *in which that word was used at the times these statutes were enacted.*

It cannot be called "evidences of debt" — that is, of personal indebtedness — in the sense, in which this description is evidently used in these statutes.

It is not an "obligation," in the sense, in which that word is legally used. That is to say, it is not a personal "obligation," in the nature of a debt, as the term debt is now understood.

It is, in law, simply *bona fide* certificates of *bona fide* stocks; as really so as are any certificates of railroad stocks, or of any other stocks whatever. It is *bona fide* certificates of, or evidences of title to, veritable property in land, as really so, as are deeds, mortgages, leases, or any other written instruments for the conveyance of title to, or rights in, real estate. As such, it obviously comes within the letter of none of the preceding prohibitions. The holders of the certificates are the *bona fide* owners of the stocks, or property represented; and in selling the stocks themselves, they pass the certificates, or evidences of title. And this is the whole matter, in a legal point of view.

The statutes, however, of some of the States are in somewhat different terms from those already cited.

Thus Vermont prohibits "any bill of credit, bond, promissory writing or note, bill of exchange, order, *or other paper.*"

Whether this prohibition of "*any other paper,*" as a currency,

can, in law, be held to prohibit the sale of *bona fide* stocks, or property in land, and passing the certificates thereof, or the titles thereto, is, to say the least, very doubtful.

New Jersey, in addition to the preceding prohibition of "bills, notes, or other evidences of debt," prohibits "any *ticket* of any denomination whatever, intended to circulate for the payment of debts, dues, or demands, in lieu of, or as a substitute for, bank notes or bills, or other lawful currency of the State."

What may be the legal meaning of a "*ticket*," we will not now undertake to settle; nor whether this prohibition interdicts the sale of *bona fide* stocks, and the transfer of the paper titles thereto.

Virginia prohibits "any note, or other security, purporting that money or other thing of value is *payable by, or on behalf of, such person*" (the person issuing).

This statute clearly would not interdict the currency proposed.

The letter of the statutes of Missouri, Kentucky, Tennessee, Alabama, North Carolina, and of the constitution of Texas, is, *perhaps*, comprehensive enough to prohibit the proposed currency.

In the statutes of Indiana, Iowa, Arkansas, Maryland, and Delaware, I have found nothing, that seemed to me to prohibit the proposed currency.

If this currency should evade the interdict of these statutes against private banking, it would also evade the interdict of the State laws against usury; for the issue of the currency by the banks, in exchange for the promissory notes of individuals, is, in law, a mere sale of *bona fide* stocks, or property, on credit, like the sale of any other stocks, or property, on credit, and at a price agreed on. And if these stocks should happen to sell for more than their nominal value, that would be a matter of no more legal importance than for railroad shares to sell for more than their par or nominal value.

But, admitting that the language of *all* the foregoing prohibitions *are* sufficiently comprehensive to embrace the currency



proposed, the statutes themselves, so far as they should be applied to that currency, would nearly all of them be unconstitutional and void, as being in conflict with the "natural right to acquire and dispose of property;" a right, that is either expressly or impliedly recognized and guaranteed by most, or all, of the State constitutions, and bills of rights. This "natural right to acquire and dispose of property," includes a right to buy and sell, as well as to produce and give away, property. The issuing of the currency proposed, and the passing of it, from hand to hand, as a currency, would, in law, be merely a buying and selling of the property it should represent—that is to say, the buying and selling of *bona fide* property in land—like any other property. The only difference between it and other property, would be, that it would be bought and sold more frequently than other property.

But not only all these State laws against private banking, but all State laws against usury, and all other laws whatsoever, that assume either to prohibit, invalidate, or impair any contract whatsoever, that is *naturally* just and obligatory, are unconstitutional and void, as being in conflict with that provision of the constitution of the United States, which declares that "no State shall pass any law impairing the obligation of contracts."

This provision does not designate what contracts have, and what have not, an "obligation." It leaves that point to be ascertained, as it necessarily must be, by the judicial tribunals, in the case of each contract that comes before them. But it clearly implies that there *are* contracts that *have* an "obligation." Any State law, therefore, which declares that such contracts shall have *no obligation*, is plainly in conflict with this provision of the constitution of the United States.

This provision also, by implying that there are contracts, that *have* an "obligation," implies that men have a right to enter into them; for if men had no right to enter into the contracts, the contracts themselves would have no obligation.

This provision, then, of the constitution of the United States,



not only implies that certain contracts *have* an obligation, but it also implies that the people have the right to enter into all such contracts, and have the benefit of them. And any State law, conflicting with either of these implications, is necessarily unconstitutional and void.

Furthermore, the language of this provision of the constitution, to wit: "the obligation [singular] of contracts" [plural], implies that there *is one and the same* "*obligation*" to all "*contracts*" *whatsoever, that have any legal obligation at all.* And there obviously must be some one principle, that gives validity to all contracts alike, that have any validity.

The law, then, of this whole country, as established by the constitution of the United States, is, that all contracts, in which this one principle of validity or "*obligation*" is found, shall be held valid; and that the States shall impose no restraints upon the people's entering into all such contracts.

All, therefore, which courts have to do, in order to determine whether any particular contract, or class of contracts, are valid, and whether the people have a right to enter into them, is simply to determine whether the contracts themselves have, or have not, this one principle of validity, or obligation, which the constitution of the United States declares shall not be impaired.

State legislation can obviously have nothing whatever to do with the solution of this question. It can neither create, nor destroy, that "*obligation of contracts,*" which the constitution forbids it to impair. It can neither give, nor take away, the right to enter into any contract whatever, that has that "*obligation.*"

But here a formidable difficulty arises. It is no less a one than this, viz.: that neither legislatures, lawyers, nor courts, know, nor even pretend to know, what "*the obligation of contracts*" is. That is to say, there is *no one principle*, known or recognized among them, by reference to which the validity or invalidity of all contracts is determined. Consequently it is not known, in the case of any single contract whatever, that is either

enforced or annulled, in a court of justice, whether the adjudication has really been in accordance with "the obligation" of the contract, or not. Startling, and almost terrifying, as this statement is, in view of the number and importance of the contracts, in which men's rights are involved, and which courts are continually annulling or enforcing, the statement is nevertheless true.

The question — what is "the obligation of contracts?" has been several times before the Supreme Court of the United States; but has never received any satisfactory answer. The last time (so far as I know) that it was brought before that court, was in 1827, in the case of *Ogden vs. Saunders* (12 *Wheaton*, 213). Several among the most eminent lawyers in the country, to wit: Webster, Wirt, Wheaton, Livingston, Ogden, Jones, and Sampson, were engaged in the cause. But they all failed to enlighten the court.

The court consisted, at that time, of seven judges. Among these *seven* judges, *four* different opinions prevailed as to what "the obligation of contracts" was. Three of the judges said it was one thing; two of them said it was another; one said it was another; and one said it was another. No one opinion commanded the assent even of a majority of the court. And thus the court virtually confessed that, *as a court*, they did not know what "the obligation of contracts" was.

The reasonable presumption is, that no one of these opinions was correct; for if either had been correct, it would have been likely to secure the assent of the whole court, or at least of a majority.

But, although the court could not agree as to what the obligation of contracts was, four of the justices did agree in declaring that the insolvent law of New York did not impair the obligation of any contracts, that were made, in New York, subsequently to the passage of the law. To appreciate the farcical character of this conclusion, we have only to consider that, among these *four* justices, *three* different opinions prevailed as to what "the obli-



gation" was, which they said the law did not impair. And from that time until now, this ridiculous opinion of these four justices, who virtually confessed that they knew nothing of the question they assumed to decide, has stood as law throughout the country, and been received, by legislatures and courts, as sufficient authority for the State legislatures to fix, prescribe, alter, nullify, or impair, at their discretion, the obligation of any and all contracts entered into subsequently to the passage of their laws. This fact is sufficient to show that the ignorance of the Supreme Court of the United States, as to the obligation of contracts, is abundantly participated in by the legislatures and courts of the States.

The writer of this will not attempt, at this time — although he may, perhaps, at some future time — to define this constitutional "obligation of contracts," any further than to say that it must necessarily be the *natural* obligation. That is, it must be the obligation, which contracts have, on principles of natural law, and natural right, as distinguished from any arbitrary, partial, or conditional obligation, which legislatures may assume to create, and attach to contracts.

This constitutional prohibition upon any law impairing the obligation of contracts, is analogous to those provisions, in both the State and National constitutions, which forbid any laws infringing "the freedom of speech or the press," "the free exercise of religion," and "the right to keep and bear arms."

"The freedom of speech and the press," which is here forbidden to be infringed, is not any merely arbitrary freedom, which legislatures may assume to create and define by statute. But it is the *natural* freedom; or that freedom, to which all mankind are entitled of natural right. In other words, it is such as each and every man can exercise, without invading the rights of others, and consistently with an equal freedom on the part of others.

If "the freedom," here forbidden to be infringed, were only such freedom as legislatures might, in their pleasure or discretion,



see fit to institute, the prohibition, instead of protecting *any* "freedom of speech or the press," would of itself imply an authority for the entire destruction of all such "freedom."

The same is true of "the free exercise of religion," and "the right to keep and bear arms." If the rights, which, under these names, are constitutionally protected, instead of being the natural rights, which belong to all mankind, were only such rights as legislatures, in their pleasure or discretion, might assume to create, and grant to the people, the prohibitions themselves would impliedly authorize legislatures to destroy those very rights, which they now are commanded to hold sacred.

So, too, "the obligation of contracts," which the States are forbidden to impair, is the *natural* obligation; that obligation, which contracts have of natural right, and in conformity with natural justice; and not any merely arbitrary, fantastic, absurd, or unjust obligation, which ignorant, corrupt, or tyrannical legislatures may assume to create, and attach to contracts. Otherwise this very prohibition against "any law impairing the obligation of contracts," would allow legislatures, in their pleasure or discretion, to destroy the obligation of all contracts whatsoever.

That this constitutional "obligation of contracts" is the *natural* obligation, is proved by the language of the provision itself, which, as has already been said, implies that "the obligation [singular] of contracts" [plural] *is one and the same obligation for all contracts whatsoever, that have any legal obligation at all*. This obligation, which is the same in all obligatory contracts, must necessarily be the natural obligation, and not any artificial one prescribed by legislatures; because it would obviously be impossible for legislatures to create any one obligation, different from the natural one, and prescribe it for, or attach it to, all contracts whatsoever. Certainly no such thing was ever attempted, or thought of.

This obligation, which the States are forbidden to impair, is proved to be the natural one, by still another fact, viz.: that it is, and necessarily must be, the same in every State in the

Union ; forasmuch as the prohibition mentions but *one* obligation, which the States are forbidden to impair ; and the prohibition to impair that *one* obligation is imposed alike upon all the States. If this "obligation" were an artificial one, to be created by State legislatures, it would be liable to be different in every State, since the constitution does not authorize any one State, nor even Congress, to create any one artificial obligation, and prescribe it as a rule for all the States.

This obligation, which the States are forbidden to impair, must be the natural one, for the still further reason, that otherwise that large class of contracts — by far the largest part of all the contracts, which men enter into, and which courts recognize as valid, but in regard to which no special "obligation" has ever been prescribed by legislation — would, in the view of the constitution, have no validity or obligation at all.

Still further. Inasmuch as the natural obligation is necessarily the only *real* obligation, which, in the nature of things, contracts can possibly have ; and inasmuch as all artificial or unnatural obligations are inevitably spurious, false, and unjust, that paramount rule of legal interpretation, which requires that a meaning favorable to justice, rather than injustice, shall be given to the words of all instruments, that will bear such a meaning, requires that "the obligation," which the constitution forbids to be impaired, should be held to be the natural and true obligation, rather than any one of those innumerable false obligations, which legislatures are in the habit of prescribing in its stead.

Finally. Inasmuch as the artificial obligations of contracts are innumerable ; and inasmuch as this constitutional provision does not particularly describe the obligation it designs to protect, that obligation must be presumed to be the natural one, or else the provision itself, on account of its indefiniteness, must utterly fail of protecting any obligation at all.

The natural obligation of a contract, then, being the only one, which courts are at liberty to regard, their first duty, on this subject, obviously is to ascertain what the *natural* obligation of



contracts is. When they shall have done this, they will have discovered an universal law for all contracts; a law, that must nullify all those State laws — absurd, vexatious, tyrannical, and unjust — with which the statute books of the States are filled, having for their objects to destroy or impair men's natural right of making obligatory contracts, and to prescribe what obligations, different from the natural and true one, men's contracts shall have.

Strictly speaking, courts have no rightful authority either to enforce or annul a single contract, of any name or nature whatever, until they shall have ascertained what this constitutional, or *natural*, obligation of contracts is. But, if they will continue to do so, it is manifestly sheer mendacity, or sheer stupidity, for them to declare that the contracts of private bankers, and contracts now termed usurious — contracts *naturally* obligatory as any that men ever enter into, or as any that courts ever enforce — have no obligation; or that anybody can be lawfully punished for entering into such contracts.

Furthermore, if the *natural* obligation of contracts is the only obligation, which courts are at liberty to regard, they are bound to disregard all those State laws, or acts of incorporation, of any and every kind, whether for banking purposes or any other, which attempt to limit the liability of stockholders to any thing less than the natural obligation of their contracts.

In short, the only constitutional power, now existing in this country, to prohibit any contract whatever, that is naturally obligatory, or to impair the natural obligation of any contract whatever, is the single power given to Congress “to establish uniform laws on the subject of bankruptcies, throughout the United States.” \*

\* Independently of the injustice of all laws impairing the natural “obligation of contracts,” there was a very weighty reason why the *States* should have no power to enact bankrupt laws. If they had this power, each State might have the motive to pass such a law for the purpose of liberating her own citizens from their obligations to the citizens of other States; when, if the law were to operate



There is, therefore, no legal obstacle in the way of the immediate adoption of the banking system now proposed; nor any occasion to consult the State legislatures, or ask their permission, in the matter. Nor, in loaning the currency, will there be any occasion to pay any regard to usury laws.

only as between her own citizens, she might not choose to pass the law. This power of passing bankrupt laws was, therefore, confided solely to the general government; and its laws were required to be "uniform throughout the United States."

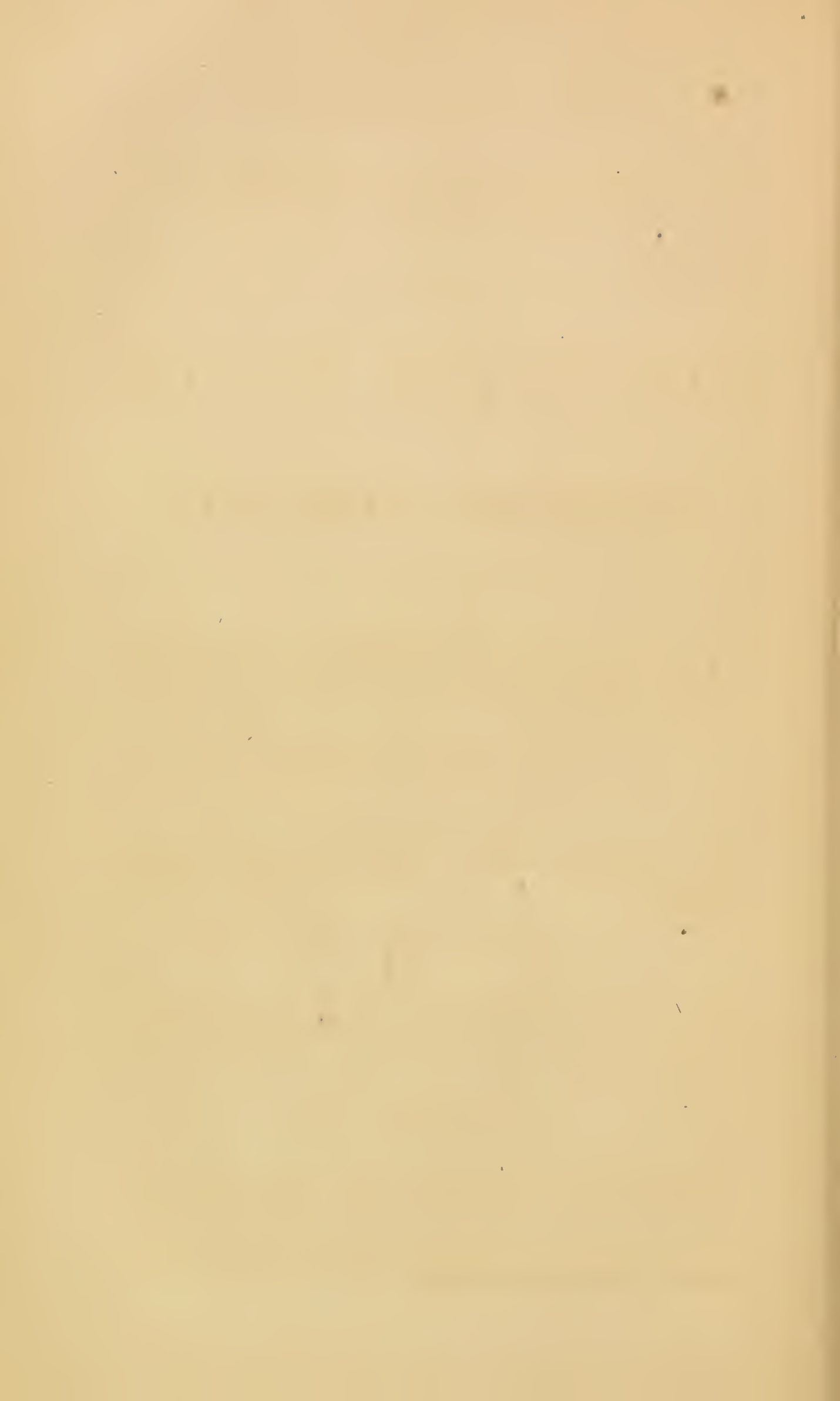
In this connection, it may not be impertinent for the writer to say, that, if the *natural* "obligation of contracts" were known, he apprehends there would be no occasion for any bankrupt or insolvent laws at all. He apprehends there is a natural limit to the obligation of contracts; that, in the case of ordinary credit contracts, *time* is an essential element of the contracts; that, if there be no other limit to the natural obligation of *such* contracts, the principle, that the law requires impossibilities of no one, fixes such a limit; and that, therefore, the most that the law can require, in the way of the fulfilment of a *time* contract, is that the debtor shall exercise due integrity and diligence during the time his contract has to run; and that, if he do this, he can absolve himself from the obligation of his contract, by paying to the extent of his ability, when the contract becomes due.

This writer apprehends, however, that a more precise definition, even than this, may be given of the obligation of a contract. But this is not the place to attempt it.

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PART SECOND.

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ARTICLES OF ASSOCIATION

OF A

MORTGAGE STOCK

BANKING COMPANY.

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[Entered according to Act of Congress, in the year 1860, by **LYSANDER SPOONER**,  
in the Clerk's office of the District Court of the United States, for the District  
of Massachusetts.]

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ARTICLE I.

This ASSOCIATION shall be called the **BOSTON BANKING COMPANY**.

ARTICLE II.

The **BANKING HOUSE** of said COMPANY shall always be in the **CITY of BOSTON**, in the **COUNTY of SUFFOLK**, in the **STATE of MASSACHUSETTS**.

ARTICLE III.

The **TRUSTEES** of the **CAPITAL** of said ASSOCIATION shall be **A—— A——**, **B—— B——**, and **C—— C——**, all of said **Boston**, the survivors and survivor of them, and their successors appointed as hereinafter prescribed.

## ARTICLE IV.

The CAPITAL STOCK of said COMPANY shall consist of four several mortgages, for the aggregate amount of ONE HUNDRED THOUSAND DOLLARS, and interest, made to said TRUSTEES, as follows, to wit: One mortgage, made by F—— F——, for the sum of TEN THOUSAND DOLLARS and interest; one mortgage, made by G—— G——, for TWENTY THOUSAND DOLLARS and interest; one mortgage, made by H—— H——, for THIRTY THOUSAND DOLLARS and interest; and one mortgage, made by I—— I——, for FORTY THOUSAND DOLLARS and interest.

Said mortgages were all entered for record, in the REGISTRY OF DEEDS for said COUNTY of SUFFOLK, in the STATE of MASSACHUSETTS, on this first day of January, in the year eighteen hundred and sixty, and the following are copies thereof, to wit:

## STOCK MORTGAGE.

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[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

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KNOW ALL MEN BY THESE PRESENTS, That I, F—— F——, of BOSTON, in the COUNTY of SUFFOLK, in the STATE of MASSACHUSETTS, in consideration of one dollar paid me by A—— A——, B—— B——, and C—— C——, all of said BOSTON, TRUSTEES of the BOSTON BANKING COMPANY, the receipt of which is acknowledged, do hereby give, grant, sell, and convey unto the said A—— A——, B—— B——, and C—— C——, in their capacities as Trustees of said Boston Banking Company,

and to the survivors and survivor of them, and to their successors in the like capacities, and to their assigns, the following described premises, to wit.

[Here insert a description of the premises.]

Said premises are hereby conveyed to said Trustees, in trust, as a part of the CAPITAL STOCK of said BOSTON BANKING COMPANY, to be held, used, and disposed of by them, and their successors in the office of Trustees, in accordance, and only in accordance, with the terms of this mortgage, and the ARTICLES of ASSOCIATION of said BOSTON BANKING COMPANY; which ARTICLES have been this day agreed upon, by and between the said A—— A——, B—— B——, and C—— C——, TRUSTEES, on the one hand, and me, the said F—— F——, and G—— G——, and H—— H——, and I—— I——, on the other hand.

Said Articles of Association consist of        printed pages, each one of which is signed, at the bottom, by the said A—— A——, B—— B——, and C—— C——, Trustees, and also by me the grantor, and the said G—— G——, H—— H——, and I—— I——. And nine copies thereof have been made and signed as aforesaid, and one copy thereof delivered to each of all the aforesaid parties; and one copy is deposited with Lysander Spooner, of said Boston. Said Trustees are also to cause said Articles of Association, signed on the bottom of each page as aforesaid, to be immediately recorded in the Registry of Deeds for said County of Suffolk; and the copy, from which the record shall be made, shall forever remain on file in said Registry.

To have and to hold the aforegranted premises to the said A—— A——, B—— B——, and C—— C——, Trustees as aforesaid, and to the survivors and survivor of them, and their successors in office, in trust as aforesaid, and to their assigns forever.

And I the said F—— F——, for myself, my heirs, executors, and administrators, do covenant with the said grantees and their



successors and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free of all encumbrances; that I have good right to sell and convey the same to the said grantees, their successors and assigns as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantees, their successors and assigns forever, against the lawful claims and demands of all persons.

*PROVIDED, NEVERTHELESS,* That if the said F—— F——, his heirs, executors, administrators, or assigns, shall pay to the said A—— A——, B—— B——, and C—— C——, Trustees, the survivors or survivor of them, their successors, or assigns, the sum of TEN THOUSAND DOLLARS, within one year after demand therefor, in writing, on or after the first day of January, in the year EIGHTEEN HUNDRED AND EIGHTY; and shall also pay interest semi-annually on said ten thousand dollars, from and after this first day of January, in the year EIGHTEEN HUNDRED AND SIXTY, at the rate of SEVEN PER CENTUM per annum; said interest to be paid on the first days of July and January, in each and every year; and whenever either of said days shall fall on Sunday, the interest to be paid on the Saturday next preceding; [and if it shall ever be fully, finally, and judicially determined that interest at the rate of seven per centum per annum cannot be lawfully claimed upon this contract, then this contract shall be valid for interest at the rate of only six per centum per annum;]\*

\* The provision in brackets need be inserted only in those States where the laws forbid a higher rate of interest than six per cent. Although such laws are unconstitutional in all the States, yet as it is perhaps uncertain how the courts will decide the question, it may be best to guard against any possible consequences of an usurious contract, by making the rate conditional on the decision of the courts.

The object of fixing the rate of interest at seven per cent., instead of six, is that the stock may be certain to pay a six per cent. dividend, after deducting all expenses of the company, even though no profit at all should be made by the banking.

and if interest shall ever fail to be paid on the day it shall become due, then interest shall be paid on interest, at the rate of SIX per centum per annum ; and shall also repay to said Trustees, the survivors and survivor of them, their successors and assigns, all such sums, with interest, (at the rate of six per centum per annum,) as they may lawfully expend, in pursuance of said ARTICLES OF ASSOCIATION, for, and on account of, taxes, and insurance upon, and sale of, the mortgaged premises, or any part thereof ; then this deed shall be void to all intents and purposes.

AND PROVIDED ALSO THAT, at any time after four months' continuance of any breach of any of the foregoing conditions, the grantees, the survivors or survivor of them, their successors or assigns, may sell and dispose of the granted premises, with all improvements that may be thereon, at public auction ; such sale to be in said City of Boston, without further notice or demand, except giving notice of the time and place of sale, by properly advertising the same in each of the six weeks next preceding the sale, in at least three newspapers printed in said County of Suffolk ; and in his or their own names — that is to say, the Trustees as Trustees, and their assigns as assigns — or as the attorney or attorneys of the grantor or his assigns, for that purpose by these presents duly authorized, convey the same, absolutely and in fee simple, to the purchaser or purchasers accordingly ; and out of the money arising from such sale, to retain all sums, principal and interest, then secured by this deed, (whether then or thereafter payable,) together with all costs and expenses, including all sums paid by said grantees, the survivors and survivor of them, their successors or assigns, for or on account of taxes and insurance on the premises ; PAYING the surplus, if any, to the said grantor or his assigns, or to the court ordering or confirming such sale ; AND such sale shall forever bar the said grantor, and all persons claiming by or under him, from all right and interest in the premises, either at law or in equity. It being mutually agreed that the said Trustees, the survivors and survivor of them, and their successors (in their capacities as

Trustees, and not otherwise) and their assigns, (in their individual capacity,) may purchase at said sale, and that no other purchaser shall be answerable for the application of the purchase money.

AND PROVIDED FURTHER, That until default of the payment of the said Ten Thousand Dollars, or interest, or other sum herein secured to be paid, neither the grantees, nor either of them, nor their successors nor assigns shall have any right to enter and take possession of the premises.

IN WITNESS WHEREOF, I, the said F—— F——, and I, C—— F——, wife of said grantor, who, for the consideration aforesaid, and of one dollar to me paid by said grantees, the receipt of which is hereby acknowledged, do hereby release to said grantees, the survivors and survivor of them, and to their successors and assigns forever, all my right of or to a homestead in or out of said real estate, and also all my right and title of or to dower in the granted premises, have hereunto set our hands and seals, this first day of January, in the year EIGHTEEN HUNDRED AND SIXTY.

*Signed, sealed, and delivered,*  
*in presence of*  
 R—— R——.  
 S—— S——.

F—— F——. [SEAL.]

C—— F——. [SEAL.]

[Here insert copies of the other Mortgages.]

## ARTICLE V.

Said CAPITAL STOCK shall be divided into ONE THOUSAND SHARES, of ONE HUNDRED DOLLARS EACH. These shares shall be numbered consecutively, from one to one thousand, inclusive. They are hereby declared to be the property of the aforesaid mortgagors, and shall be apportioned among them, according to



the amounts of their respective mortgages aforesaid, as follows, to wit: ONE HUNDRED SHARES, numbered consecutively, from one to one hundred, inclusive, shall be the property of the said F—— F——; TWO HUNDRED SHARES, numbered consecutively, from one hundred and one to three hundred, inclusive, shall be the property of the said G—— G——; THREE HUNDRED SHARES, numbered consecutively from three hundred and one to six hundred, inclusive, shall be the property of the said H—— H——; and the remaining FOUR HUNDRED SHARES, numbered consecutively from six hundred and one to one thousand, inclusive, shall be the property of the said I—— I——. And the aforesaid stock shall be entered upon the books of the Trustees as the property of the said F—— F——, G—— G——, H—— H——, and I—— I——, according to the apportionment aforesaid.

## ARTICLE VI.

The aforesaid one thousand shares of Stock shall be called the PRODUCTIVE STOCK, and shall be entitled to *all* the dividends.

## ARTICLE VII.

The dividends shall consist of the interest on said mortgages, and the profits of the banking, and of any other business, done by said Company.

## ARTICLE VIII.

In addition to the said PRODUCTIVE STOCK, the said Trustees shall create another Stock, to the amount of ONE HUNDRED THOUSAND DOLLARS, to be called *Circulating Stock*; which *Circulating Stock* shall be divided into shares of ONE DOLLAR EACH. Said shares shall be numbered consecutively from one

to one hundred thousand, inclusive; and certificates, scrip, or bills thereof, transferable by delivery, and making and declaring said *Circulating Stock* to be the property of the bearers or holders of said certificates, scrip, or bills, shall be made and signed by the Trustees, and countersigned by the President of the Council, and by the Cashier.

## ARTICLE IX.

Said *Circulating Stock* shall be entitled to no dividends; and its value will consist wholly in its title to be received in payment of any debts due to said BOSTON BANKING COMPANY, and in its title to be otherwise redeemed, as is hereinafter provided for. In law, it shall be in the nature of a lien upon the PRODUCTIVE STOCK.

## ARTICLE X.

The said certificates; scrip, or bills of said *Circulating Stock* may be of various denominations; that is to say, for any number of shares, from one to one hundred; and each certificate, scrip, or bill shall not only express the aggregate number of shares it represents, but also the particular number borne by each share represented.\*

All certificates, scrip, or bills of said *Circulating Stock* shall be in the following form, (names and dates being changed when necessary, and the numbers also being made to correspond with the aggregate number of shares, and the particular number of each share, represented in each certificate,) to wit.

\* As a means of detecting counterfeits, over-issues, &c., it will be useful to have each certificate of *Circulating Stock* express the particular numbers borne by the shares it represents.

\$

5

MORTGAGE STOCK CURRENCY.

\$

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[Entered according to Act of Congress, in the year 1860, by LEVANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

CERTIFICATE No. 173...FIVE SHARES of CIRCULATING STOCK, numbered 151, 152, 153, 154, and 155 [respectively—  
or—consecutively, from 151 to 155, inclusive].\* ONE DOLLAR PER SHARE.

Boston,

}

BOSTON BANKING COMPANY.

{

Suffolk Co.

Massachusetts.

Be it Known, That the Bearer is the Proprietor of FIVE SHARES of the CIRCULATING STOCK of the BOSTON BANKING COMPANY; which Shares, numbered as above, are of the nominal value of FIVE DOLLARS, and are entitled to be received at that value, in payment of any debts due to said Company, and also to be redeemed by the Transfer of Productive Stock, or otherwise, according to the provisions of the Articles of Association of said Company, which bear date January 1st, 1860.

BOSTON, MARCH 1st, 1860.

D\_\_\_\_\_D\_\_\_\_\_

E\_\_\_\_\_E\_\_\_\_\_

\_\_\_\_\_,

\_\_\_\_\_,

President of Council.

Cashier.

A\_\_\_\_\_A\_\_\_\_\_

B\_\_\_\_\_B\_\_\_\_\_

C\_\_\_\_\_C\_\_\_\_\_

\_\_\_\_\_,

\_\_\_\_\_,

Trustees of the

Boston

Banking Company.

FIVE.

}

Capital, \$100,000, in Mortgages bearing Seven per cent. interest.

Secondary Stockholders are paid Six per cent. Dividends.

Productive Stock, \$100 per Share.

{

FIVE.

\* Where a Certificate represents but a single Share, the words in brackets may be left out.



## ARTICLE XI.

No certificates, scrip, or bills of said *Circulating Stock*, for a greater amount, in the aggregate, than ONE HUNDRED THOUSAND SHARES, shall ever be made and signed by the Trustees, President, or Cashier, so as to be in existence at any one time; but if any of said certificates, scrip, or bills shall, at any time, be cancelled or destroyed, either by the Trustees, or any other persons, new certificates, scrip, or bills may be substituted therefor, except when a corresponding amount of PRODUCTIVE STOCK shall also have been cancelled, as hereinafter authorized.

## CHAPTER XII.

The Trustees (subject to the conditions hereinafter prescribed) may issue said certificates, scrip, or bills of the *Circulating Stock*, for circulation as a Currency, by discounting therewith, or exchanging them for, such promissory notes, checks, drafts, orders, bills of exchange, or other securities, as the Trustees and Council may see fit to accept; also by purchasing therewith such furniture, books, and other personal property as said Company may need to purchase, for the purposes of its business as a banking company; also by paying any debts that may at any time be due by said Company, and any expenses that said Company may lawfully incur, in the course and prosecution of its said business.

## ARTICLE XIII.

The said certificates, scrip, or bills of said *Circulating Stock*, shall, at all times, be a lawful tender, at its nominal value of One Dollar per share, in payment of any debts due to said BOSTON BANKING COMPANY. They shall also, at all times, (except as

hereinafter provided for, in Article XXIV,) WHEN PRESENTED IN EVEN AMOUNTS OF ONE OR MORE HUNDRED SHARES, be entitled to be redeemed, on demand, by the transfer of an equivalent nominal amount of PRODUCTIVE STOCK, unless redeemed by the payment of gold or silver coin of equivalent nominal value.

#### A R T I C L E   X I V .

The original holders of the PRODUCTIVE STOCK, to wit: the aforesaid F—— F——, G—— G——, H—— H——, and I—— I——, shall be termed PRIMARY STOCKHOLDERS.

#### A R T I C L E   X V .

All persons, who shall hold PRODUCTIVE STOCK by transfer, in redemption of *Circulating Stock*, shall be called *Secondary Stockholders*; that is to say, unless and until they shall become PRIMARY STOCKHOLDERS, in the manner hereinafter provided for in Article XXI.

#### A R T I C L E   X V I .

The *Secondary Stockholders* shall be entitled to receive DIVIDENDS on their stock, at the rate of SIX PER CENTUM PER ANNUM — NO MORE, NO LESS — payable semi-annually, on the regular dividend days, at the BANKING HOUSE of said COMPANY.

#### A R T I C L E   X V I I .

The PRIMARY STOCKHOLDERS shall be entitled to receive whatever dividends may remain to be distributed, after the dividends to the *Secondary Stockholders* shall have been paid, and all other liabilities and obligations of the Company shall have been cancelled — whether such dividends (to the PRIMARY Stockholders) shall amount to more or less than six per centum per annum.

## ARTICLE XVIII.

Whenever it shall be necessary to transfer a share of PRODUCTIVE STOCK, in redemption of *Circulating Stock*, the share to be transferred shall be selected, by the Trustees, from such shares (if any there shall be) as shall have been taken, by said Company, in payment of debts of delinquent stockholders, or be otherwise owned by said Company, in its corporate capacity.

But if, at any time, when it shall be necessary to transfer PRODUCTIVE STOCK, in redemption of *Circulating Stock*, there shall be no PRODUCTIVE STOCK owned by the Company, in its corporate capacity, a selection of the stock to be transferred, shall be made, by the Trustees, from among the stock of the several PRIMARY HOLDERS, in the most impartial and equitable manner practicable, taking stock, in the first instance, from the largest PRIMARY HOLDERS, rather than from the smallest, and afterwards apportioning the stock, taken for such purposes, equitably as may be, among the several PRIMARY HOLDERS, according to the amounts of their stock respectively.\* And no PRODUCTIVE STOCK, holden by a *Secondary holder*, shall ever be transferred in redemption of *Circulating Stock*.

## ARTICLE XIX.

Whenever any PRODUCTIVE STOCK, less than the *entire* PRODUCTIVE STOCK of the Company, shall have been transferred, in redemption of *Circulating Stock*—that is to say, so long as any portion of the PRODUCTIVE STOCK shall remain in

\* A PRIMARY STOCKHOLDER can have no serious objection to the transfer of his PRODUCTIVE STOCK, in redemption of the *Circulation*; because no dividends can be paid to any of the then existing body of PRIMARY HOLDERS, until his transferred stock shall have been repurchased by the Company, and restored to him, when it will stand on the same footing, in regard to dividends, as if it had never been transferred. See Article XX.



the hands either of PRIMARY HOLDERS, or of the Company in its corporate capacity — said Company shall have the right to buy back, from the *Secondary holder or holders*, any and all such transferred stock, by paying therefor, at the banking house of the Company, gold or silver coin of equivalent nominal value, and interest or dividends thereon, at the rate of six per centum per annum, from the time said stock was thus transferred. And, for this purpose, any dividend, that may have been paid to the *Secondary holder*, since the transfer of the stock to him, and previous to the re-purchase of it from him, shall be accounted the same as if paid at the time of such re-purchase.

## A R T I C L E   X X .

Whenever any PRODUCTIVE STOCK, belonging to a PRIMARY HOLDER, shall have been transferred by the Company, in redemption of *Circulating Stock*, no dividends shall be paid to any of the then existing body of PRIMARY HOLDERS, until such transferred stock shall have been bought back by the Company, and restored to the PRIMARY HOLDER, from whom it shall have been taken, or to his representatives, and placed on the same footing, in regard to dividends, with all the other PRODUCTIVE STOCK of the PRIMARY HOLDERS.

## A R T I C L E   X X I .

Whenever, if ever, it shall happen that the *entire* PRODUCTIVE STOCK of said Company shall have been transferred, from the first body of PRIMARY HOLDERS, (including, as such, the Company in its corporate capacity,) in redemption of *Circulating Stock*, all the rights of the then existing body of PRIMARY HOLDERS, and especially their right to buy back such transferred stock, from the *Secondary holders*, shall at once cease and become extinct; and the then existing body of *Secondary holders* shall,

each and all, by reason, and in virtue, of that event, succeed at once to all the rights, and come at once under all the responsibilities, of PRIMARY STOCKHOLDERS; and shall be deemed to be PRIMARY STOCKHOLDERS, both in law, and in fact. And the business of the Company shall then proceed as at first. And if it shall ever happen that the *entire* PRODUCTIVE STOCK of said Company shall be transferred from this second body of PRIMARY STOCKHOLDERS, in redemption of *Circulating Stock*, all the rights of said second body of PRIMARY STOCKHOLDERS shall at once cease and become extinct; and the then existing (second) body of *Secondary Stockholders* shall, each and all, by reason, and in virtue, of that event, succeed at once to all the rights, and come at once under all the liabilities, of PRIMARY STOCKHOLDERS; and shall be deemed to be PRIMARY STOCKHOLDERS, both in law, and in fact. And the same transfer of rights and liabilities, from one body of PRIMARY STOCKHOLDERS, to the then existing body of *Secondary Stockholders*, shall take place so often as, and whenever, the *entire* PRODUCTIVE STOCK of said Company shall have been transferred in redemption of the *Circulating Stock*.\*

## ARTICLE XXII.

Whenever a body of *Secondary Stockholders* shall have become PRIMARY HOLDERS, in the manner provided for in Article XXI, no dividend shall be paid to any one of them, until he shall have surrendered his certificate or certificates of stock as a *Secondary*

\* Of course no body of PRIMARY STOCKHOLDERS will ever suffer the *entire* PRODUCTIVE STOCK of the Company to be transferred, in redemption of *Circulation*, in the manner provided for in this Article, until they shall become utterly bankrupt; that is, until all the resources of the bank, that belong to the PRIMARY STOCKHOLDERS — such, for example, as debts due the bank — shall be utterly exhausted; because, by doing so, they would forfeit those resources. They will therefore hold on to *some* of the PRODUCTIVE STOCK, (though it be but a single share,) as long as they hold on to any of the property of the Company.

*holder*, and accepted a new certificate, or new certificates, of stock, as a PRIMARY HOLDER. And such new certificate or certificates shall be granted to him on demand, and on the surrender of his certificate or certificates as a *Secondary holder*.

### A R T I C L E   X X I I I .

The Trustees may accept loans from the PRIMARY STOCKHOLDERS, whenever it may be necessary or convenient, in order to save the PRODUCTIVE STOCK from being transferred in redemption of the *Circulating Stock*; such loans to be repaid only in the manner, and in the order relatively to other claims, hereinafter provided for in Article XXIX.

And if any PRIMARY HOLDER or HOLDERS of PRODUCTIVE STOCK shall loan, to the Company, his or their just proportion of the amount necessary to save all the PRODUCTIVE STOCK from being transferred in redemption of the *Circulating Stock*, his or their own PRODUCTIVE STOCK shall be exempted from such transfer, so long as it can be, consistently with the rights of the holders of *Circulating Stock*.

But if a loan shall ever be made to the Company, by a PRIMARY STOCKHOLDER, and, before such loan shall be repaid, the *entire* PRODUCTIVE STOCK of the Company shall have been transferred to *Secondary holders*, in redemption of *Circulating Stock*, as mentioned in Article XXI, such PRIMARY STOCKHOLDER'S claim to have his loan repaid to him, shall be forfeited.\*

### A R T I C L E   X X I V .

The requirement, in Article XIII, that certificates, scrip, or bills of *Circulating Stock*, in even amounts of one or more hundred shares, shall be redeemed by coin or PRODUCTIVE STOCK,

\* This provision is necessary, for otherwise the PRODUCTIVE STOCK would pass into the hands of the new holders, subject to an encumbrance, and therefore not at its par value.



on demand, shall be understood subject to this proviso, viz.: that whenever any certificates, scrip, or bills of *Circulating Stock*, in even amounts of one or more hundred shares, shall be presented by the holder thereof, to the Company, for redemption, and the Company shall elect to pay interest on them semi-annually, at the banking house of the Company, on the regular dividend days, at the rate of six per centum per annum, rather than redeem them by coin or PRODUCTIVE STOCK, they shall be at liberty to do so. But if said Company shall at any time fail to pay said semi-annual interest, on the day it shall become due, the holder of said certificates, scrip, or bills may at once demand their redemption, either in gold or silver coin, or in PRODUCTIVE STOCK, at the option of the Company; and the interest, that shall have accrued, shall be due and payable at once, in gold and silver coin.

*Provided, however,* that unless the presentation of said certificates, scrip, or bills for redemption, shall have been made at least four months prior to the next succeeding dividend day, the interest, which shall have accrued on such certificates, scrip, or bills, on the first dividend day next after their presentation, shall not be payable, except at the option of the Company, until the second dividend day next after their presentation.

## ARTICLE XXV.

Whenever certificates, scrip, or bills of *Circulating Stock*, in even amounts of one or more hundred dollars, shall have been presented for redemption, and the Company shall have elected to pay interest on them, as provided for in Article XXIV, rather than redeem them by coin or PRODUCTIVE STOCK, the holder thereof shall have the right to deposit his said certificates, scrip, or bills with said Company, and to demand a proper voucher therefor, specifying the amount and date of the deposit, and acknowledging that said certificates, scrip, or bills were presented

for redemption. And the certificates, scrip, or bills, thus deposited, shall be immediately sealed up in a secure envelope, upon which the name of the depositor, and the amount, date, and purpose of the deposit (that is, for redemption) shall be endorsed by said Company. And the seal of said envelope shall not be broken by said Company, nor any of its officers, without the consent of said depositor, or his representatives, given in writing, until said Company shall have made a tender of redemption and interest, as provided for in Articles XIII and XXIV. And the Company shall be responsible to said depositor, and his representatives, for the safe keeping of said deposit against all accidents, trespasses, and contingencies, of every name and nature whatsoever, until they shall have made the tender aforesaid.\*

*Provided, however,* that if any depositor, or his representatives, shall withdraw his or their deposit at any time prior to the day on which interest thereon would become payable, neither he nor they shall have any claim for interest during the time of the deposit.

## A R T I C L E   X X V I .

If, when the holder of certificates, scrip, or bills of *Circulating Stock, in even amounts of one or more hundred shares*, shall have presented them for redemption, and the Company shall have elected to pay interest on them, as mentioned in Article XXIV, he shall prefer to retain them in his own custody, rather than deposit them with said Company, he shall be at liberty to do so, without affecting his rights, as provided for in said Article, except that the Company shall not be responsible for the safe keeping of said certificates, scrip, or bills. And he shall have a right to demand of said Company that they seal up said certifi-

\* It is necessary that bills deposited for redemption, should be sealed up, for otherwise it would be in the power of the Company to re-issue them. If re-issued, before they had been redeemed, they would require a double redemption ; and there would not be enough PRODUCTIVE STOCK to redeem them.



cates, scrip, or bills, in a secure envelope, and endorse thereon the amount of said certificates, scrip, or bills, and the date and purpose of their presentation, (that is, for redemption,) and the name of the owner thereof, and then return to himself the parcel so sealed up and endorsed. And he shall also have the right to demand of said Company a separate and proper voucher of the amount of said certificates, scrip, or bills, and the date and purpose of their presentation.

*Provided, however,* that if, when a sealed parcel of certificates, scrip, or bills shall have been presented for redemption, and then sealed up, and returned to the owner, he or his representatives shall break the seal of said parcel, so as to admit of his or their having taken out or used any of the certificates, scrip, or bills, he and they shall thereby forfeit all claim to interest on the whole parcel.\*

\* Articles XXIV, XXV, and XXVI, may be left out, if it should be thought best; but it will probably be expedient to retain them, to prevent the too frequent transfer and re-purchase of PRODUCTIVE STOCK.

A holder of certificates, scrip, or bills of *Circulating Stock*, who shall have presented them for redemption, can have no reasonable objection to the non-redemption of them, by the transfer of PRODUCTIVE STOCK, so long as interest upon them is paid semi-annually; because they being in the meantime sealed up, cannot be put in circulation by the bank, so as to increase the liabilities of the bank, or endanger their own final redemption. All he loses by the non-immediate redemption of them, by the transfer of PRODUCTIVE STOCK, is, that he cannot have the rights of a holder of PRODUCTIVE STOCK, to vote for Councillors, and to be himself a Councillor. But he is amply compensated for this deprivation, by the fact that the Company are bound (Article XXIX) to pay him interest, *in full*, on his bills, (presented for redemption,) before any dividend at all can be paid on the very PRODUCTIVE STOCK itself, which would be transferred to him, in redemption of his bills, if he were to insist on their immediate redemption.

He also has the assurance that the Company will redeem his bills soon as reasonably may be, either by coin or PRODUCTIVE STOCK; because, until they do so, the bank must pay interest on them, and the bills remain sealed up, and the bank lose the benefit of putting them in circulation.

The reason, why the Company may not wish, at all times, to transfer PRODUCTIVE STOCK, in redemption of bills, immediately on their being presented for redemption, is, that it might be very troublesome to be continually changing



## ARTICLE XXVII.

Certificates, scrip, or bills of *Circulating Stock*, in less amounts than one hundred dollars, besides being receivable in payment of debts due to the Company, may be redeemed by gold and silver coin, on demand, if the Trustees shall deem it expedient, and if there shall be no other claims having a preference, by virtue of Article XXIX. But if there shall be any delay in the redemption, whether it shall be caused by the Trustees deeming it inexpedient to redeem in gold or silver on demand, or by there being other claims having a preference, by virtue of Article XXIX, then interest, at the rate of six per centum per annum, shall be paid, at the banking house of the Company, on all amounts of fifty shares and upwards, from and after one month after the day of presentation; said interest to be payable only at the time of redemption of the principal, unless by consent of the Company. But amounts of less than fifty shares, shall be entitled to no interest.

the ownership of the PRODUCTIVE STOCK, by transferring it in redemption of bills, and then re-purchasing it in a short time afterwards. The Company would, therefore, wish to transfer PRODUCTIVE STOCK, in redemption of bills, only when it was likely to be a considerable time before they could re-purchase it.

The ordinary, if not the only, motive, the Company would have for not redeeming bills immediately on presentation, by the transfer of PRODUCTIVE STOCK, would be, that they would prefer, and would expect soon to be able, to redeem them with coin. And as the bills, sealed up, and drawing interest, would be just as valuable and productive to the holder, as the same amount of PRODUCTIVE STOCK (held by a *Secondary* holder) would be, there is no good reason for compelling the Company to transfer PRODUCTIVE STOCK, when they would have a right, and would most likely very soon wish, and be able, to re-purchase it.

Unless the banking business were badly conducted,—that is, unless the bank should discount long paper, or bad paper,—there would probably never be a necessity for the transfer of any PRODUCTIVE STOCK at all, in redemption of the *Circulation*. But the redemption (when not made by receiving the bills in payment of debts due the bank) would take place in coin, either immediately on the presentation of the bills, or very soon after, with interest for the delay.

The amounts thus presented for redemption, in order to be entitled either to interest, or to redemption in gold or silver, shall be deposited with the Company, and a proper voucher therefor given by the Company. And if the deposit shall be withdrawn before redemption, all interest thereon shall be forfeited.

The *Circulating Stock*, thus deposited for redemption, shall neither be loaned, nor re-issued, by the Company, until it shall have been redeemed. But it shall be sealed up in a secure envelope, and the amount, date, and purpose of the deposit, (that is, for redemption,) with the name of the depositor, endorsed thereon. And the seal of the envelope shall not be broken by the Company, until they shall have tendered redemption in gold or silver coin, of equivalent nominal value, with interest where interest shall be due. And the Company shall be responsible to said depositor, and his representatives, for the safe keeping of said deposit, against all accidents, trespasses, and contingencies, of every name and nature whatsoever, until they shall have made the tender aforesaid. And said deposit shall be redeemed, in the order in which it stands, relatively to other claims, in Article XXIX.\*

\* This Article is, perhaps, not very important. Its object is to make it for the interest of the holders of *Circulating Stock*, in less amounts than one hundred shares (dollars), to dispose of it in the course of business, and let it come back to the bank, either in payment of debts due to the bank, or in even amounts of one or more hundred shares (dollars), so as to give the Company an opportunity to redeem it with PRODUCTIVE STOCK, rather than coin, if they shall choose to do so. Such would be the common course of things without this provision. Yet as it may sometimes happen that it would be for the interest of a holder of *Circulating Stock*, of a less amount than one hundred shares (dollars), to return it for redemption in gold or silver, rather than dispose of it in the course of business, it is perhaps proper that a redemption, in gold and silver, should be provided. This Article, therefore, provides a redemption, but one a little less favorable than where the amount is one or more hundreds.

Where a bank is prosperous, and above the necessity of transferring PRODUCTIVE STOCK at all, in redemption of their *Circulation*, it will be for their interest (as promoting the reputation of the bank) to redeem their *Circulation* at once, with gold and silver, when presented in amounts less than \$100, rather than receive it on deposit and pay interest.



## ARTICLE XXVIII.

PRODUCTIVE STOCK may be bought back from the *Secondary holders*, and *Circulating Stock* (presented and waiting for redemption) may be redeemed, by the Company, on the regular semi-annual dividend days, without giving any previous notice to the holders of such stock.

But if the Company shall ever buy back PRODUCTIVE STOCK from the *Secondary holders*, or shall ever redeem *Circulating Stock* (that shall have been presented, and be waiting for redemption) at any time other than on a regular semi-annual dividend day, they shall give the holder of such PRODUCTIVE or *Circulating Stock* reasonable notice thereof beforehand, if he or his known attorney, shall be a resident of the State of Massachusetts, to the end that he or his attorney may have opportunity to be present, and receive the money for his stock at the time it shall be tendered.

## ARTICLE XXIX.

All the resources of said Company (including the interest on the mortgages) shall be applied in, and only in, the following manner, giving preference to each of the several classes of claims, liabilities, and obligations, in the order in which they are here enumerated, to wit:

1. To the payment, in full, of all the necessary and current expenses of the Company, and any and all liabilities and obligations, of every name and nature whatsoever, except those hereafter enumerated in this Article.

2. To the payment, in full, of all interest due on certificates, scrip, or bills of *Circulating Stock*, that shall have been presented, *in even amounts of one or more hundred shares*, for redemption, and not been redeemed.



3. To the payment, in full, of a semi-annual dividend, of six per centum per annum, on all such PRODUCTIVE STOCK, as shall be in the hands of *Secondary Stockholders*.

4. To the redemption of all such certificates, scrip, or bills of the *Circulating Stock*, as shall have been presented, *in even amounts of one or more hundred shares*, and be waiting for redemption.

5. To the redemption of all *Circulating Stock*, presented and waiting for redemption, *in amounts less than one hundred shares*; with interest where interest shall be due.

6. To the re-purchase of all such PRODUCTIVE STOCK, as shall be in the hands of *Secondary holders*.

7. To the payment of all loans made to the Company by the PRIMARY STOCKHOLDERS, with interest on the same, at a rate agreed on, not exceeding six per centum per annum.

8. To the payment of the regular salaries of the Trustees, (independently of their share of the profits,) and any compensation that may be allowed to the President of the Council.

9. To the payment of all dividends, *made up exclusively of interest on the mortgages*, to the PRIMARY STOCKHOLDERS.\*

10. To the payment of dividends, *made up exclusively of profits*, to the PRIMARY STOCKHOLDERS, and to the Trustees their proportion of the profits.\*

And especially no dividends, made up either of interest or profits, shall ever be paid to the PRIMARY STOCKHOLDERS, until all the other expenses, liabilities, obligations, interest, and dividends (to *Secondary Stockholders*) before mentioned to be paid,

\* It is necessary that a distinction should be made between dividends, made up of *interest*, and those made up of *profits*, at least so long as any PRODUCTIVE STOCK shall remain in the hands of the original mortgagors, or their assigns (holders of the mortgaged estates) as PRIMARY HOLDERS; because the actual payment, by them, of interest, which is to be at once returned to them as dividends, will be unnecessary (see Article XLII). The Company may also wish the *profits* to accumulate as a reserved fund, instead of being distributed; when they might not be willing actually to pay interest (not otherwise needed) simply to create a reserved fund.

shall have been paid in full; and all the *Circulating Stock*, presented and waiting for redemption, shall have been redeemed; and all PRODUCTIVE STOCK, in the hands of *Secondary holders*, shall have been re-purchased, and restored to its PRIMARY HOLDERS.

## A R T I C L E   X X X.

The Trustees, or any two of them, or the sole Trustee, if at any time there should be but one, of said Boston Banking Company, are and is hereby authorized and empowered to transfer so much PRODUCTIVE STOCK of the PRIMARY STOCKHOLDERS, in redemption of the *Circulating Stock* of said Company, as it may become necessary or proper to transfer for that purpose.

And whenever PRODUCTIVE STOCK is to be thus transferred, from a PRIMARY STOCKHOLDER, in redemption of *Circulating Stock*, the transfer shall be made upon a book kept for that purpose, and in the form following, (names, dates, and numbers being made to correspond with the facts in each case,) to wit:

### Transfer of Productive Stock in Redemption of *Circulating Stock.*

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

B O S T O N, } BOSTON BANKING COMPANY. { SUFFOLK CO.  
Massachusetts.

*Transfer No. 115. TEN SHARES. Nominal value, \$1000.*

From O—— O——, PRIMARY STOCKHOLDER.  
To P—— P——, *Secondary Stockholder.*

KNOW ALL MEN, That we, A—— A——, B—— B——, and C—— C——, Trustees [or I, A—— A——, sole Trustee] of the Boston Banking Company, by virtue of the power granted

us [or me] by the Articles of Association of said Company, dated January 1st, 1860, do hereby transfer, and have hereby transferred, TEN shares of the PRODUCTIVE STOCK of said Company, from O—— O——, the PRIMARY HOLDER thereof, to P—— P——, of ——, in the County of ——, in the State of ——, in redemption of an equivalent nominal amount of the *Circulating Stock* of said Company. Said shares are numbered 101, 102, 103, 104, 105, 106, 107, 108, 109, and 110 respectively, [or—consecutively from 101 to 110 inclusive,] and are to be holden by said P—— P——, as a *Secondary Stockholder*, and subject to the provisions of said Articles of Association, and especially subject to the right of said Company to re-convey any or all of said shares to the said O—— O——, or his representatives, whenever said Company shall have tendered or paid to said P—— P——, or his representatives, in gold or silver coin, the full nominal value of the share or shares to be so re-conveyed, with all such interest and dividends thereon as shall be due at the time of such re-conveyance.

*Dated at Boston, this—— day of——, 1860.*

A——	A——.	} Trustees of the Boston Banking Company.
B——	B——.	
C——	C——.	

E—— E——, *Cashier.*

## ARTICLE XXXI.

The Trustees, or any two of them, or the sole Trustee, if at any time there shall be but one, of said Boston Banking Company, are and is hereby authorized and empowered to re-convey any and all PRODUCTIVE STOCK of the *Secondary Stockholders*, to the PRIMARY HOLDERS, from whom it shall have been taken, or to their representatives, upon paying or tendering to said *Secondary Stockholders*, at the banking house of said Company,



in gold or silver coin, the full nominal value of the PRODUCTIVE STOCK so re-conveyed, with all such interest or dividends thereon as may be due at the time of such re-conveyance.

And whenever PRODUCTIVE STOCK is to be re-conveyed from a *Secondary Stockholder* to the PRIMARY STOCKHOLDER, from whom it shall have been taken, or to his representatives, the re-conveyance shall be made upon a book kept for that purpose, and in the form following, (names, dates, and numbers being made to correspond with the facts in each case,) to wit :

## Re-conveyance of Productive Stock from a Secondary to a Primary Stockholder.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

Boston, } BOSTON BANKING COMPANY. { SUFFOLK Co.  
Massachusetts.

*Re-conveyance No. 28. SIX SHARES. Nominal value, \$600.*

From P—— P——, *Secondary Stockholder.*

To O—— O——, PRIMARY STOCKHOLDER.

KNOW ALL MEN, That we, A—— A——, B—— B——, and C—— C——, Trustees [or I, A—— A——, sole Trustee] of the Boston Banking Company, by virtue of the power granted us [or me] by the Articles of Association of said Company, dated January 1st, 1860, do hereby re-convey, and have hereby re-conveyed, SIX shares of the PRODUCTIVE STOCK of said Company, from P—— P——, a *Secondary holder* thereof, to O—— O——, the PRIMARY HOLDER thereof; having tendered [or paid]

to said P—— P——, in gold or silver coin, the full nominal value of said SIX SHARES, and all interest and dividends due thereon, up to this date. SAID SHARES are numbered 101, 102, 103, 104, 105, and 106, respectively, [or—consecutively from 101 to 106 inclusive,] and were transferred from said O—— O——, to said P—— P——, on the —— day of ——, 1860, in redemption of *Circulating Stock*.

*Dated at Boston, this —— day of——, 1860.*

A——	A——.	} Trustees of the Boston Banking Company.
B——	B——.	
C——	C——.	

E—— E——, *Cashier*.

## ARTICLE XXXII.

Whenever PRODUCTIVE STOCK shall be transferred, by the Trustees, in redemption of *Circulating Stock*, credit for the same shall be given, in a book kept for that purpose, to the PRIMARY STOCKHOLDER, from whom it shall have been taken. And when such PRODUCTIVE STOCK, or any part thereof, shall be re-conveyed to such PRIMARY STOCKHOLDER, or to his representatives, the proper debit shall be entered against the original credit.

## ARTICLE XXXIII.

The Trustees shall grant to each and every PRIMARY STOCKHOLDER, a certificate, or certificates, for his or her PRODUCTIVE STOCK, in the following form, (names, dates, and numbers being made to correspond with the facts in each case,) to wit:

# Primary Stockholder's Certificate of Productive Stock

OF THE FOLLOWING NAMED

MORTGAGE STOCK BANKING COMPANY.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER,  
in the Clerk's office of the District Court of the United States, for the District  
of Massachusetts.]

CAPITAL STOCK, \$100,000 :

*In Mortgages bearing Seven per Cent. Interest.*

PRODUCTIVE STOCK, \$100 PER SHARE.

BOSTON, } BOSTON BANKING COMPANY. { SUFFOLK CO.  
Massachusetts.

*Certificate No. 64. SEVEN SHARES. Nominal value, \$700.*

BE IT KNOWN, That F—— F——, of Boston, in the County of Suffolk, in the State of Massachusetts, is the proprietor, and a PRIMARY HOLDER, of SEVEN SHARES of the PRODUCTIVE STOCK of the BOSTON BANKING COMPANY: a MORTGAGE STOCK BANKING COMPANY, having their Banking House at Boston, in the County of Suffolk, in the State of Massachusetts; which shares are numbered 91, 92, 93, 94, 95, 96, and 97, respectively [or—consecutively from 91 to 97 inclusive], and are of the nominal value of SEVEN HUNDRED DOLLARS, and are holden by said F—— F——, as a PRIMARY HOLDER, and subject to the provisions of the Articles of Association of said Boston Banking Company, dated January 1st, 1860; and are transferable only by written assignment, of the form subjoined; the transfer to be complete only on the assignment being recorded in the books of



the Company, and the surrender of this certificate, when a new one will be issued.

*Dated at said Boston, this tenth day of August, 1860.*

[SEAL.]	A_____	A_____.	} Trustees of the Boston Banking Company.
	B_____	B_____.	
	C_____	C_____.	

E\_\_\_\_\_ E\_\_\_\_\_, *Cashier.*

To the above certificate shall be added a blank conveyance, in the following form, (names, dates, and numbers being made to correspond with the facts in each case,) to wit :

## Primary Stockholder's Sale of Productive Stock

OF THE FOLLOWING NAMED

### MORTGAGE STOCK BANKING COMPANY.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

CAPITAL STOCK, \$100,000 :

*In Mortgages bearing Seven per Cent. Interest.*

PRODUCTIVE STOCK, \$100 PER SHARE.

Boston, } BOSTON BANKING COMPANY. { Suffolk Co.  
Massachusetts.

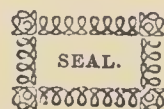
\_\_\_\_\_ SHARES. *Nominal value, \$\_\_\_\_\_.*

KNOW ALL MEN, That I, \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_, in the State of \_\_\_\_\_, being the true owner, and a PRIMARY HOLDER of \_\_\_\_\_ Share of the PRODUCTIVE STOCK

of the BOSTON BANKING COMPANY: a MORTGAGE STOCK BANKING COMPANY, having its Banking House in Boston, in the County of Suffolk, in the State of Massachusetts; which share, ——— numbered ——— respectively, [or—consecutively from ——— to ——— inclusive,] for value received, have given, granted, sold, and assigned, and do hereby give, grant, sell, and assign to ———, of ———, in the County of ———, in the State of ———, ——— heirs and assigns forever, the said ——— share of PRODUCTIVE STOCK, and all my right, title, interest, and property in and to the same. To have and to hold the same to the said ———, ——— heirs and assigns, as PRIMARY HOLDERS thereof, to their sole use and benefit, subject only to the Articles of Association of said Company; which Articles are dated January 1st, 1860.

*Witness my hand and seal, this ——— day of ———, in the year 18—.*

*Witness.*



BOSTON, ———, 18—. Recorded in the book of SALES of PRODUCTIVE STOCK by PRIMARY STOCKHOLDERS, No. ———, Page ———.

E——— E———, *Cashier.*

#### A R T I C L E   X X X I V .

The Trustees shall grant to each and every *Secondary Stockholder* a certificate, or certificates, for his or her PRODUCTIVE STOCK, in the following form, (names, dates, and numbers being made to correspond with the facts in each case,) to wit:

## Secondary Stockholder's Certificate of Productive Stock

OF THE FOLLOWING NAMED

### MORTGAGE STOCK BANKING COMPANY.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

CAPITAL STOCK, \$100,000 :

*In Mortgages bearing Seven per Cent. Interest.*

PRODUCTIVE STOCK, \$100 PER SHARE.

*Secondary Stockholders* are paid Dividends of Six per cent. per annum.

BOSTON, } BOSTON BANKING COMPANY. { SUFFOLK Co.  
Massachusetts.

*Certificate No. 25. NINE SHARES. Nominal value, \$900.*

BE IT KNOWN, That L—— L——, of Roxbury, in the County of Norfolk, in the State of Massachusetts, is a *Secondary holder* of NINE SHARES of the PRODUCTIVE STOCK of the BOSTON BANKING COMPANY: a MORTGAGE STOCK BANKING COMPANY, which has its Banking House at Boston, in the County of Suffolk, in the State of Massachusetts; which shares are numbered 31, 32, 33, 34, 35, 36, 37, 38, and 39, respectively, [or—consecutively from 31 to 39 inclusive,] and are of the nominal value of NINE HUNDRED DOLLARS; and are holden by said L—— L——, as a *Secondary holder*, subject to the provisions of the Articles of Association of said Boston Banking Company,



dated January 1st, 1860 ; and are transferable only by a written assignment of the form subjoined ; the transfer to be complete only on the assignment being recorded in the books of the Company, and the surrender of this certificate, when a new one will be issued.

*Dated at said Boston, this 20th day of March, 1860.*

[SEAL.]

A———	A———	} Trustees of the Boston Banking Company.
B———	B———	
C———	C———	

E——— E———, *Cashier.*

To the above certificate shall be added a blank conveyance in the following form, to wit :

## Secondary Stockholder's Sale of Productive Stock

OF THE FOLLOWING NAMED

### MORTGAGE STOCK BANKING COMPANY.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

CAPITAL STOCK, \$100,000 :

*In Mortgages bearing Seven per Cent. Interest.*

PRODUCTIVE STOCK, \$100 PER SHARE.

*Secondary Stockholders* are paid Dividends of Six per cent. per annum.

BOSTON, } BOSTON BANKING COMPANY. { SUFFOLK Co.  
Massachusetts.

——— SHARES. *Nominal value, \$——.*

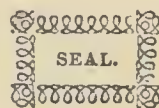
BE IT KNOWN, That I, ———, of ———, in the County of ———, in the State of ———, being the true owner, and a

*Secondary holder* of — share of PRODUCTIVE STOCK of the BOSTON BANKING COMPANY: a MORTGAGE STOCK BANKING COMPANY, having its Banking House in Boston, in the County of Suffolk, in the State of Massachusetts; which share, — numbered ——— respectively, [or—consecutively from — to — inclusive] for value received, do hereby give, grant, sell, and assign, and have hereby given, granted, sold, and assigned, to —, of —, in the County of —, in the State of —, all my right, title, interest, and property in and to the said — share of PRODUCTIVE STOCK.

To have and to hold the same to the said —, — heirs and assigns, as *Secondary holders*, and not otherwise, to their sole use and benefit, subject only to the Articles of Association of said BOSTON BANKING COMPANY; which Articles are dated January 1st, 1860.

*Witness my hand and seal, this — day of —, in the year 18—.*

*Witness.*



BOSTON, —, 18—. Recorded in the book of SALES of PRODUCTIVE STOCK by *Secondary Stockholders*, No. —, Page —.

E— E—, *Cashier.*

## ARTICLE XXXV.

Whenever PRODUCTIVE STOCK of said Company shall have been transferred to, and be in the hands of, a *Secondary Stockholder*, and the PRIMARY STOCKHOLDER, from whom it shall have been taken, or his representatives, shall wish to convey all his or their right and property in it, and all his or their right and claim to have it re-purchased and restored to him or them by

the Company, the conveyance of such right, property, and claim shall be made in the following form, (names, dates, and numbers being made to correspond with the facts in each case,) to wit:

## Sale, by a Primary Stockholder,

OF HIS RIGHT TO PRODUCTIVE STOCK IN THE HANDS OF A  
SECONDARY STOCKHOLDER.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

CAPITAL STOCK, \$100,000:

*In Mortgages bearing Seven per Cent. Interest.*

PRODUCTIVE STOCK, \$100 PER SHARE.

BOSTON, } BOSTON BANKING COMPANY. { SUFFOLK Co.  
Massachusetts.

TWELVE SHARES. *Nominal value, \$1,200.*

WHEREAS, on or before the tenth day of September, 1860, *Twelve Shares* of the PRODUCTIVE STOCK of the BOSTON BANKING COMPANY, (a Mortgage Stock Banking Company, having its Banking House in Boston, in the County of Suffolk, and State of Massachusetts,) being then the property of F—— F——, of ——, in the County of ——, in the State of ——, as a PRIMARY HOLDER thereof, and being numbered 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74, respectively, [or—consecutively from 63 to 74 inclusive,] were transferred, by the Trustees of said Company, from said F—— F——, to K—— K——, of ——, in the County of ——, in the State of ——, in redemption of *Circulating Stock*; and are now holden by said



K——— K———, his heirs or assigns, as *Secondary holder* or *holders* thereof.

And whereas said Company are bound by the Articles of Association of said Company, (dated January 1st, 1860,) to re-purchase said shares of PRODUCTIVE STOCK, and restore them to said F—— F——, or his representatives, if the resources of said Company will enable them to do so consistently with said Articles of Association.

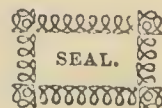
And whereas, as will appear by the records of said Company, I, M——— M———, of ——, in the County of ——, in the State of ——, now have, hold, and possess, all the rights in said shares of PRODUCTIVE STOCK, which he, the said F——— F———, or his representatives can have, hold, or possess, to wit,—the right and claim to have said shares re-purchased by said Company, and restored to the PRIMARY HOLDER thereof, his heirs or assigns, provided such re-purchase can be made consistently with said Articles of Association.

Now, therefore, be it known that I, the said M——— M———, for value received, have given, granted, sold, and assigned, and do hereby give, grant, sell, and assign to S——— S———, of ——, in the County of ——, in the State of ——, all my right, title, and interest in said *Twelve Shares* of PRODUCTIVE STOCK, and all my right and claim to have the same re-purchased and restored to me by said Company. And I hereby request, authorize, and require the TRUSTEES of said BOSTON BANKING COMPANY, whenever (if ever) they shall re-purchase said shares, or any of them, from the *Secondary holder* thereof, to convey the same to the said S——— S———, his heirs or assigns, instead of restoring them to myself, my heirs or assigns. To have and to hold the same to the said S——— S———, his heirs and assigns forever, as PRIMARY HOLDERS thereof.

*Witness my hand and seal, this —— day of ——, in the year 18—.*

M——— M———.

*Witness* Y——— Y———.



BOSTON, October 10, 18—. Recorded in the book of SALES by PRIMARY STOCKHOLDERS, of their Right to PRODUCTIVE STOCK in the hands of *Secondary Stockholders*, No. —, Page —.

E—— E——, *Cashier*.\*

And such sale shall not be complete until the above Deed shall be recorded by the Company, in a book kept by them for that purpose. Nor shall any dividend be paid to the grantee, named in said Deed, until the Deed shall have been recorded as aforesaid, and a new certificate or certificates for the stock issued to him.

## ARTICLE XXXVI.

The Trustees are hereby authorized, and if, in their judgment, it shall be necessary or expedient, they are required, to pay the taxes on any or all the mortgaged estates before mentioned, and to keep all buildings and fixtures on each of said estates, insured, at the expense of each estate respectively, for the benefit of said Company. And the amount of such taxes, and the expense of such insurance, and all necessary and proper expenses, incurred by the Company, in and about such insurance, and in recovering the amount insured (having been first paid or assumed by the Company), shall be payable to the Company, by the mortgagor, or his representatives (the holders of the mortgaged estate) with interest (at the rate of six per centum per annum) on the day on which his or their next semi-annual interest on the mortgage shall become due.

Any moneys recovered by the Company on the insurance of any mortgaged estate before mentioned, shall be applied in the following manner, to wit:

\* The form of the above Deed is somewhat awkward, owing to the fact that it was necessary to adapt it to the cases of all sales, whether by the PRIMARY STOCKHOLDER himself, (from whom the stock should have been transferred,) or by his heirs or assigns. Had it been necessary to adapt the form only to the first of these cases, it might have been made a little more simple.

1. To the payment of all expenses, incurred by the Company, for, or on account of, such insurance, or in recovering the amount insured; and also the amount paid as taxes, with interest on all such sums from the time they were paid.

2. To the payment of any interest that may be due, and remaining unpaid, upon the mortgage of said estate.

Of the sum, if any, then remaining of said insurance money, one or more of the following dispositions shall be made, at the discretion of the Trustees, to wit:

3. If the then present holder or holders of the mortgaged estate, shall be a PRIMARY HOLDER or HOLDERS of any PRODUCTIVE STOCK, the Trustees may cancel the same, and pay over to him or them an equivalent nominal amount of the insurance money, provided they can do so without injustice to any one, and especially without throwing any unjust or unequal burdens upon the other PRIMARY HOLDERS.

And if any profits or dividends shall be equitably due, on the PRODUCTIVE STOCK thus cancelled, they shall be paid.

4. Or the said insurance money may be appropriated to the use of the Company, and in consideration thereof the Company shall incur the obligation to cancel an equivalent nominal amount of PRODUCTIVE STOCK. And if they shall be able to purchase the PRODUCTIVE STOCK to be cancelled, by paying less than its nominal value, the profit shall belong to the Company. But if, in order to get the necessary amount of PRODUCTIVE STOCK, to be cancelled, it shall be necessary for them to pay more than its nominal value, the loss shall fall upon the Company.

5. And if the amount of said insurance money shall not be precisely equal, in nominal amount, to the nominal value of any number of shares of PRODUCTIVE STOCK, the remainder, or fractional part of the nominal value of one share of PRODUCTIVE STOCK, shall either be paid over to the holder of the mortgaged estate, and no reduction in the mortgage be made on account of such remainder, or fractional part; or it shall be retained by the Trustees, and applied to the payment of any future interest on the mortgage, or taxes on the mortgaged property, or of any



future expenses for, or on account of, the insurance of the property mortgaged; or the Trustees may, if they deem it expedient, accept it as the equivalent of another share of PRODUCTIVE STOCK, which share shall be cancelled at the expense of the Company.

And whenever any PRODUCTIVE STOCK shall be cancelled, as provided for in this Article, an equivalent nominal amount of *Circulating Stock* shall also be cancelled. And the mortgage on the estate shall also be released, in whole, or in part, as the case may require.

## ARTICLE XXXVII.

If ever the interest on any of the aforesaid mortgages, or the money paid by the Company for taxes, (with interest on the same,) or for, or on account of, insurance on any of the mortgaged property, (with interest on the same,) shall not be paid when it shall become due, the Trustees may, in their discretion, proceed in any one or more of the following modes, to wit:

1. The Trustees may take possession of the mortgaged property, and apply the rents and profits thereof to the payment of the interest due on the mortgage, and the money due for taxes, or for, or on account of, insurance, and all expense and trouble incurred by the Trustees in managing said mortgaged estate.

2. If the owner or owners of the mortgaged property shall be, at the time, a PRIMARY HOLDER or HOLDERS of any PRODUCTIVE STOCK of the Company, the Trustees, if they can do so without injustice to any one, and without throwing any unjust or unequal burden upon other PRIMARY STOCKHOLDERS, may cancel any amount of such PRODUCTIVE STOCK, not exceeding the nominal amount of the mortgage, and then release the mortgage for a corresponding amount. But such PRODUCTIVE STOCK shall not be thus cancelled, without giving the holder or holders thereof at least —— months' notice that it will be cancelled, unless payment be made.

3. If any of the conditions of the mortgage shall remain unfulfilled for the space of —— months, the Trustees may sell the mortgaged estate, at public auction, after having properly advertised the same for sale, at least once in each of the —— successive weeks next preceding the sale, in —— newspapers in the county, where the estate is situated. Out of the proceeds of the sale, the Trustees shall first pay all expenses of said sale, and all interest due on the mortgage, and all money remaining unpaid, that shall have been expended by the Company, for taxes, and for or on account of insurance, on said mortgaged property, with interest on the same.

Out of the amount then remaining from the proceeds of the sale, a sum equal to the nominal amount of the mortgage, (if so much there shall be,) shall go into the treasury of the Company; and the excess, if any there shall be, shall be paid over to the mortgagor, or his representatives (the holders of the mortgaged estate).

And in consideration of the sum, that shall thus have gone into the treasury of the Company, (even though it shall be less than the nominal amount of the mortgage,) the Company shall incur the obligation to cancel an amount of PRODUCTIVE STOCK nominally equal in value to the nominal amount of the mortgage. And if they shall be able to purchase and cancel the necessary amount of PRODUCTIVE STOCK, by paying a less sum for it than that which shall have gone into the treasury of the Company as aforesaid, the profit shall belong to the Company. But if, in order to get the necessary amount of PRODUCTIVE STOCK to be cancelled, they shall be compelled to pay more than the amount that shall have gone into the treasury of the Company as aforesaid, the loss shall fall on the Company.\*

Whenever any PRODUCTIVE STOCK shall be cancelled, in pursuance of this Article, an equivalent nominal amount of *Circulating Stock* shall also be cancelled.

\* This provision makes the mortgages mutually responsible for the solvency or sufficiency of each other.

## ARTICLE XXXVIII.

If any holder or holders of any of the before-named mortgaged estates shall, at any time, wish to have his or their estate released from the mortgage, and shall also be, at the same time, a PRIMARY HOLDER or HOLDERS of PRODUCTIVE STOCK, the Trustees, with the consent of the Council, may cancel such stock, and release the mortgage for a corresponding amount, provided it can be done without injustice to any one, and without throwing any unjust or unequal burden upon other PRIMARY HOLDERS of PRODUCTIVE STOCK.

And whenever any PRODUCTIVE STOCK shall be cancelled, in pursuance of this Article, an equivalent nominal amount of *Circulating Stock* shall also be cancelled.

## ARTICLE XXXIX.

Whenever any shares of either PRODUCTIVE or *Circulating Stock* shall be cancelled, a record shall be preserved of the particular numbers borne by such shares respectively.

## ARTICLE XL.

The regular semi-annual dividend days shall be the first days of January and July, annually. Provided, however, that when either of those days shall fall on a Sunday, the Monday next succeeding shall be the dividend day.

## ARTICLE XLI.

No dividends shall ever be paid to any of the PRIMARY STOCKHOLDERS, except from interest, that shall actually have accrued on the mortgages, and *bona fide* profits already realized by the Company.



Nor shall any dividends, *of profits*, (independently of interest on the mortgages,) ever be paid to the PRIMARY STOCKHOLDERS, except with the consent of the Council.\*

### A R T I C L E   X L I I .

Whenever the owner of any of the before-named mortgaged estates shall be a PRIMARY HOLDER of any PRODUCTIVE STOCK, the actual payment of no more interest shall be required of him, than shall be needed (and be due from him as his proportion) to meet the obligations of the Company. But the remainder shall be credited to him, as having been paid by him, and then debited to him as dividend paid, the same as if it had actually been paid by him as interest, and then actually repaid to him as dividend.†

And whenever the Trustees shall foresee that the liabilities of the Company are likely to render it necessary that a mortgagor, (or owner of mortgaged estate,) and PRIMARY HOLDER of PRODUCTIVE STOCK, shall make an actual payment of the whole, or any part, of the interest on his mortgage, at the next semi-annual period, at which such interest will become due, they shall give him notice of such necessity, as soon as it shall become evident to them that such necessity is likely to exist.

### A R T I C L E   X L I I I .

Accumulated profits of the Company may be loaned by the Company.

\* See Note to Article XXIX, page 22.

† So long as the bank is prosperous, and the PRODUCTIVE STOCK shall remain in the hands of the mortgagors, or the owners of the mortgaged estates, there will, of course, be no need that the interest be paid at all; because, if actually paid in as interest, it would have to be immediately paid back to the same persons as dividend. All that will be necessary, therefore, will be, that the interest be simply credited as interest, and then debited as dividend, to the same persons, without any actual payment being made of either interest or dividend.

## ARTICLE XLIV.

No promissory note, or other evidence of debt, discounted by, and running to, said Boston Banking Company, shall ever, unless with the written consent of all makers and indorsers, who shall be liable thereon, be sold or transferred by said Company, until after it shall have become due.\*

## ARTICLE XLV.

1. Any person who shall be a holder (whether PRIMARY, or *Secondary*, or both) of Twenty Shares of the PRODUCTIVE STOCK of said Company, may, for the time being, either be a Councillor, or appoint one in his stead, at his election. And for every additional Twenty Shares, so owned by him, he may appoint an additional Councillor.†

\* The purpose of this Article is to furnish a guaranty to borrowers of *Circulating Stock*, that they will be able to pay their debts to the bank in the same currency, which they receive of the bank. If the bank could transfer a note, which it had discounted, the maker might be compelled to pay it with specie. The Article will be beneficial to the bank itself, because it gives the public a guaranty that the bills of the bank will all be wanted to pay debts due the bank. It thus tends to give to the bills the same value as gold and silver, in the estimation of the public, and thus promote their circulation.

The Article also tends to put it out of the power of the officers of the bank to embezzle its funds.

The argument, that it might sometimes be advantageous for the bank to transfer a doubtful note, before it should become due, is of little weight. If a debt be bad, the loss of it may as well fall upon the bank as upon any body else. And the knowledge that this must be the case, will make the bank more cautious as to its loans. Besides, a case would but rarely happen, where the bank would be benefitted by transferring a note. And then the gain would be less than the loss arising to the credit of the bills of the bank, in consequence of any uncertainty as to their being wanted to pay debts due the bank.

The right of the bank to transfer a note, after it shall have become due, is the only right that the bank really needs, or that it would be expedient to exercise.

† As the powers of the Councillors are mostly advisory, rather than authoritative, the name of *Councillors* is more appropriate than that of *Directors*.

2. All persons, who shall be respectively holders (whether PRIMARY, or *Secondary*, or both) of less than Twenty Shares of PRODUCTIVE STOCK, may unite to choose, by ballot, so many Councillors as their PRODUCTIVE STOCK may entitle them to choose, choosing one Councillor for every Twenty Shares. In thus choosing Councillors, each Stockholder shall be entitled to one vote for each share of his PRODUCTIVE STOCK. These Councillors shall be chosen on each of the semi-annual dividend days, and shall hold their offices until the dividend day next succeeding the one on which they shall be chosen. The Stockholders, named in this provision, shall be furnished, by the Trustees, with suitable accommodations for their meetings (for the choice of Councillors), in the banking house of the Company.

3. The Board of Councillors may, by ballot, choose their President. He shall hold his office only until the dividend day next after his election. But he may be re-elected. Whenever there shall be no President, in office, by election, the largest holder of PRODUCTIVE STOCK, who shall be a member of the Council, shall, for the time being, be the President.

4. The Councillors shall keep a record of their proceedings; may choose their own Secretary, and fix his salary; except that it shall not exceed ———— dollars per annum, unless with the consent of the Trustees.

5. The Councillors, by a majority vote of their whole number, may fix their regular times of meeting, and the number that shall constitute a quorum for business.

6. The Councillors shall, at all reasonable times, have access (so far as it shall be necessary for purposes of investigation) to all the books and papers of the Company; and shall be entitled to be informed of all the business affairs of the Company. The Council, or a Committee thereof, appointed for the purpose, shall also be consulted beforehand, by the Trustees, on all important transactions, if circumstances will reasonably admit of it.

7. The Council, or a Committee thereof, appointed for the purpose, shall have a veto upon any and all loans or discounts proposed to be made by the Trustees.



8. The Councillors shall receive no salaries for their services. But the President of the Council may, by vote of the Council, receive a salary not exceeding ———— dollars for six months.

9. The Councillors shall have suitable accommodations for their meetings furnished to them, by the Trustees, in the banking house of the Company.

## A R T I C L E   X L V I.

1. The Trustees shall keep books fully showing the pecuniary standing, and all the pecuniary transactions, of the Company.

2. The Trustees shall have two seals; with one of which they shall seal all certificates of PRODUCTIVE STOCK granted to PRIMARY STOCKHOLDERS, and with the other all certificates of PRODUCTIVE STOCK granted to *Secondary Stockholders*. They may also, if they deem it expedient, and have the consent of the Council, have a third seal, and with it seal any or all certificates of *Circulating Stock*.

3. The Trustees shall consult the Council, or a Committee thereof, appointed for the purpose, in all important matters, when reasonably practicable, and shall conform to their advice so far as they can consistently with their (the Trustees') opinion of what is just to all holders of either PRODUCTIVE or *Circulating Stock*, and safe and proper for the best pecuniary interests of the Company.\*

\* It would not be proper to make the power of the Councillors authoritative over the Trustees, because the very nature of the system makes the Trustees the attorneys of three different classes of Stockholders, to wit: the PRIMARY and *Secondary* holders of PRODUCTIVE STOCK, and the holders of *Circulating Stock*. Legally speaking, the individuals composing one of these classes, are as much Stockholders as either of the others. The holders of the *Circulating Stock* have rights in the Company, which are as strictly legal as those of the PRIMARY or *Secondary* holders of PRODUCTIVE STOCK. Yet they have no voice in choosing the Council; and no voice in the affairs of the Company, except through the Trustees. If, therefore, the Trustees were *controllable* by the Council, who repre-

4. The Trustees shall make no loans or discounts, without the consent of the Council, or of a Committee thereof, appointed for that purpose; and shall make none against their own judgments of expediency or right, even though the consent of the Council be given.

5. They shall make no loans, directly or indirectly, to either or all of themselves; shall never, as individuals, become either debtors or creditors (except for their salaries) to the Company; and never be holders of either *PRODUCTIVE* or *Circulating* Stock of the Company.\*

6. They shall employ a Cashier, and, if need be, other clerks and servants (except a solicitor or attorney); may take suitable bonds, and shall also be themselves personally responsible for the fidelity of such cashier, clerks, and servants.†

7. The Trustees may fix the salaries of the Cashier and other clerks and servants, except that the aggregate salaries of the Cashier and all other clerks and servants (except solicitor or attorney) shall not exceed ——— dollars per annum, without the consent of the Council.

8. The Trustees, with the consent of the Council, may employ a standing solicitor, or attorney, whose salary shall not exceed

sent only the holders of *PRODUCTIVE* STOCK, the rights of the holders of *Circulating* Stock might be sacrificed to the holders of *PRODUCTIVE* STOCK. It is important, therefore, that the Trustees should stand in an independent and impartial position towards all classes of Stockholders, and be directly and *legally* responsible to each and every Stockholder, of the three several kinds.

The prohibition upon the Trustees' making any loans, except with the consent of the Council, who represent the holders (both *PRIMARY* and *Secondary*) of *PRODUCTIVE* STOCK, is a sufficient security, to those Stockholders, that their interests will not be sacrificed by imprudent loans.

\* This provision may, at first view, appear unnecessarily stringent; but, on reflection, it will probably be seen that its value, as a precaution against embezzlement, and against the various sinister influences, that might otherwise operate upon the Trustees, is such as to outweigh any inconvenience.

† As the Trustees have power to appoint their own Cashier and other servants, without the consent of the Council, they should be held responsible for their fidelity.

\_\_\_\_\_ dollars per annum, without the consent of the Council.

9. The Trustees shall always have the banking house of the Company open for business, at least \_\_\_\_\_ hours, most suitable for the convenience of customers, on every day, except Sundays, holidays, and other extraordinary occasions.

10. The Trustees shall take no lease of a banking house for a longer term than \_\_\_\_\_ years, nor pay a rent of more than \_\_\_\_\_ dollars per annum, without the consent of the Council. Nor shall they invest more than \_\_\_\_\_ dollars in furniture (independently of the necessary books) for their banking house, without the consent of the Council.

## ARTICLE XLVII.

1. The Trustees, before entering on the duties of their trust, shall either give a joint bond, in the sum of \_\_\_\_\_ dollars, or several bonds, in the sum of \_\_\_\_\_ dollars each, with at least three separate and adequate sureties for each Trustee, for their fidelity as Trustees. Such bond or bonds shall run to the Council, and their successors in that office, for and on behalf of all the Stockholders in said Company — (that is to say, all holders both of *PRODUCTIVE* and *Circulating* Stock) collectively and individually.

2. Such bond or bonds shall be in the following form, (names, dates, and sums being made to correspond with the facts in each case,) to wit:



## Trustee's Bond.

[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

KNOW ALL MEN, That we, A—— A——, as principal, and H—— I——, J—— K——, and L—— M——, as sureties, are holden, and firmly bound and obliged, in the full and just sum of Sixty Thousand Dollars — that is to say, the said A—— A—— in the whole sum of Sixty Thousand Dollars, and the said sureties in the sum of Twenty Thousand Dollars each — unto Z—— A——, Y—— B——, X—— C——, W—— D——, [and others, naming them,] now constituting the Council of the Boston Banking Company (a Mortgage Stock Banking Company, having its Banking House in Boston, in the County of Suffolk, in the State of Massachusetts, and whose Articles of Association bear date January 1st, 1860) and to their successors in said office, for and in behalf of all the Stockholders of said Company, both collectively and individually; that is to say, for and in behalf of all holders both of the PRODUCTIVE and *Circulating* Stock of said Company. To the which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our Seals. Dated at said Boston, this —— day of ——, 1860.

THE CONDITION of this OBLIGATION is such that, whereas the said A—— A—— has been appointed one of the Trustees of the Capital of said Boston Banking Company, and has consented to accept said trust.

Now, therefore, if he, the said A—— A—— shall, at all times, faithfully, vigilantly, and honestly perform and fulfil all the duties of said trust, towards all the Stockholders of said

Company, both collectively and individually — that is to say, towards all the holders both of the *PRODUCTIVE* and the *Circulating* Stock of said Company; and shall make good to said Company collectively, and to all Stockholders therein individually, (whether holders of *PRODUCTIVE* or *Circulating* Stock,) all losses suffered by, or caused to, it or them, by, or by reason of, any fraud, fault, or neglect of said A—— A——, in his said office of Trustee; and shall also pay and satisfy all judgments, which may be recovered against said A—— A——, both in private suits by any individual Stockholder or Stockholders, and in suits by the Council of said Company, for losses or wrongs suffered by such Stockholder or Stockholders, individually or collectively, by, or by reason of, any fraud, fault, or neglect of said A—— A——, as Trustee as aforesaid, then this obligation shall be void; otherwise it shall remain in full force.

Signed, sealed, and delivered, in presence of	}	A———	A———. [SEAL.]
		H———	I———. [SEAL.]
		J———	K———. [SEAL.]
		L———	M———. [SEAL.]

3. And if it shall ever reasonably appear to a majority (of a quorum) of the Council, that any loss or losses have fallen upon the Company, *in its collective capacity*, through any fraud, fault, or neglect of either or all of the Trustees, it shall be the duty of the Council to bring appropriate suit or suits (at the expense of the Company) on the bond or bonds of such Trustee or Trustees. And any sum or sums, recovered in such suit or suits, shall be holden in trust by the Council until, in their judgment, such sum or sums can be safely and properly delivered over to some one or more of the Trustees of the Company. Or, if such sum or sums cannot, in the judgment of the Council, and within a reasonable time, be safely or properly delivered over to any Trustee or Trustees of the Company, the Council may, in their discretion, apply such sum or sums to the payment of any

undoubted debts or obligations, due by the Company and requiring immediate payment.

4. And if it shall ever be made reasonably to appear to a majority (of a quorum) of the Council, that any loss or losses have fallen upon, or that any wrongs have been suffered by, any individual Stockholder, or any number of Stockholders less than the whole, of said Company (whether such Stockholder or Stockholders be the holder or holders of either *PRODUCTIVE* or *Circulating* Stock) by, or by reason of, any fraud, fault, or neglect of either or all of the Trustees, it shall be the duty of the Council, on the request of such Stockholder or Stockholders, to bring appropriate suit or suits (at the expense of the Company) on the bond or bonds of such Trustee or Trustees, for and on behalf of such Stockholder or Stockholders. And any sum or sums recovered by the Council, in such suit or suits, shall be paid over, by them, to the Stockholder or Stockholders entitled thereto.

Provided, however, that the right of any Stockholder or Stockholders to have suit brought for, or in behalf of, himself or themselves, by the Council, and at the expense of the Company, as aforesaid, shall not preclude such Stockholder or Stockholders from bringing suit in his or their own name or names, if he or they shall so choose, against any or all the Trustees. And any judgment recovered in such suit, by such Stockholder or Stockholders, if not otherwise paid, shall, on demand by said Stockholder or Stockholders, be enforced, by the Council, by suit against such Trustee or Trustees, and his and their sureties, at the expense of the Company.

5. Whenever a bond or bonds, as hereinbefore provided for, shall have been given by any Trustee, or Trustees, no renewal thereof shall be claimed by the Council, oftener than once in five years, unless in case of the death or bankruptcy of a surety, or of his removal of his residence from the State of Massachusetts.

6. In case of any disagreement between any Trustee or Trustees and the Council, as to the suitableness and sufficiency of any surety offered by such Trustee or Trustees, such Trustee or



Trustees shall select one of the holders of PRODUCTIVE STOCK of the Company; and the Council shall select another such holder; and the two so selected shall select another person, who is a holder of neither PRODUCTIVE nor *Circulating* Stock of the Company; and the three, so selected, shall investigate the subject, and report thereon, in writing, to the Council; and the joint report of any two of them shall decide the question. But the Council shall not be required to accept, as a surety, any person not a resident of the State of Massachusetts.

#### A R T I C L E    X L V I I I .

If any Trustee shall be finally convicted, in any court of justice, of any embezzlement or other crime, committed in his office as a Trustee, all his rights and powers, as a Trustee, shall from that moment, cease and determine, and his place as Trustee be vacant, and liable to be filled by another.

#### A R T I C L E    X L I X .

If any Trustee shall be finally convicted, in any court of justice, of any infamous crime, *committed by him otherwise than in his capacity as Trustee*, he shall be liable to be removed from his office of Trustee, by votes representing a majority of the PRODUCTIVE STOCK of the Company, whether held by PRIMARY or *Secondary* Stockholders. Said votes shall be given in the following manner, to wit: The necessary number of Stockholders shall subscribe, upon a book kept by the Trustees, a declaration, fully setting forth the cause of the removal, and their wish and determination that he be removed. And such declaration, so subscribed, shall, from that moment, operate to

extinguish all his rights and powers as a Trustee, and to make his place vacant, and liable to be filled by another.

And each subscriber to this declaration shall affix, to his signature, the true date thereof, and the number of shares of PRODUCTIVE STOCK, of which he shall be, at the time, the holder and owner; and shall also designate himself as being either a PRIMARY or *Secondary* holder, as the case may be.

## A R T I C L E   L .

If any Trustee shall, at any time, have become so permanently sick, insane, or unable to perform the duties of his office of Trustee, or shall be so negligent of those duties, as to make it necessary or proper that his place should be declared vacant, and be filled by another, and the fact shall have been ascertained to the satisfaction of not less than four fifths, in number, of all the holders of PRODUCTIVE STOCK, they being, at the same time, holders and true owners of not less than four fifths, in quantity, of all the PRODUCTIVE STOCK of the Company (whether such holders be PRIMARY, or *Secondary*, or both) and a permanent record thereof, and of the wish and determination of such holders that he be removed, shall have been made on the books of the bank, and personally subscribed by such holders, such record shall, from the moment of its being so subscribed, operate to cancel all his rights and powers as Trustee, and vacate his place as Trustee, and make it liable to be filled by another.

And each subscriber to such record shall affix, to his signature, the true date thereof, and the number of shares of PRODUCTIVE STOCK, of which he shall be, at the time, the holder and owner; and shall also designate himself as being either a PRIMARY or *Secondary* holder, as the case may be.

## ARTICLE LI.

Whenever a vacancy shall occur in the office of Trustee, it shall be filled by the votes of not less than four fifths, in number, of all the holders of PRODUCTIVE STOCK, they being, at the same time, holders of not less than four fifths, in quantity, of all the PRODUCTIVE STOCK of the Company. And the election shall be made by the necessary number of Stockholders subscribing, upon a book of the bank, a declaration substantially in the following form, to wit:

“WE, the subscribers, being the holders and true owners of the number of shares of PRODUCTIVE STOCK of the Boston Banking Company set against our names respectively, hereby declare that T—— T——, of ——, in the County of ——, in the State of ——, is our choice for the office of Trustee of said Company, in the place of W—— W——, removed [resigned, or deceased, as the case may be].”

And each subscriber to this declaration shall affix, to his signature, the true date thereof, and the number of shares of PRODUCTIVE STOCK, of which he shall be at the time the holder and owner; and shall also designate himself as being either a PRIMARY or *Secondary* holder, as the case may be.

And when the person, so appointed, shall have given the requisite bonds to the Council, for his fidelity as a Trustee, the other Trustees [or Trustee, if there shall be but one] shall convey to him his appropriate property and rights in and over the Capital Stock and other property of said Company, by a deed in the following form, (names, dates, and numbers being made to correspond with the facts in each case,) to wit:



## Trust Deed.

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[Entered according to Act of Congress, in the year 1860, by LYSANDER SPOONER, in the Clerk's office of the District Court of the United States, for the District of Massachusetts.]

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WHEREAS R—— R——, of ——, in the County of ——, in the State of ——, has been duly appointed one of the Trustees of the Capital of the Boston Banking Company: a Mortgage Stock Banking Company, whose Articles of Association are dated January 1st, 1860, and whose Banking House is in said Boston.

AND WHEREAS, We, A—— A——, and B—— B——, both of said Boston, are now the only Trustees of said Boston Banking Company.

AND WHEREAS, By reason of the appointment aforesaid, it has become our legal duty to convey to said R—— R—— an equal right and property, with ourselves respectively, in the Capital Stock, and all other property, of said Boston Banking Company.

NOW, THEREFORE, Be it known, that we, the said A—— A——, and B—— B——, Trustees as aforesaid, in consideration of the premises, and of one dollar, to us paid by the said R—— R——, the receipt of which is hereby acknowledged, and for the purpose of investing him, the said R—— R—— with equal powers and rights with ourselves respectively in the control of the Capital Stock and all other property of said Boston Banking Company, do hereby give, grant, sell, assign, and convey, and have hereby given, granted, sold, assigned, and conveyed, unto the said R—— R——, in his capacity of Trustee as aforesaid, and to his successors in said office, one third of all our respective rights and property in and to the Capital

Stock, and all other property, of said Boston Banking Company, without any reservation or qualification whatever.

TO HAVE AND TO HOLD the same to the said R—— R——, in his capacity of Trustee as aforesaid, and not otherwise, and to his successors in said office forever, jointly with ourselves and our successors, in trust for the holders of the *PRODUCTIVE and Circulating Stock* of said Company; and to be holden and administered in accordance with the said Articles of Association of said Company, and not otherwise.

IN WITNESS WHEREOF, We, the said A—— A——, and B—— B——, have hereunto set our hands and seals this —— day of ——, in the year eighteen hundred and ——.

Signed, sealed, and delivered, in presence of	}	A—— A——. [SEAL.] B—— B——. [SEAL.]
D—— G——. F—— H——.	}	

BOSTON, October 1st, 18—. Recorded in the Journal [or Records] of the Council of the Boston Banking Company for this date [or in some particular book kept by the Council, describing it, with the page].

D—— D——, *Pres't. of Council.*  
 [or S—— B——, *Sec'y of Council.*]

BOSTON, October 2d, 18—. Recorded in the Books of the Trustees of said Boston Banking Company, to wit, in [here describe the book, whatever it may be] page —.

A—— A——, *Trustee.*  
 [or E—— E——, *Cashier.*]

And said Deed, before being delivered to the newly appointed Trustee, shall be recorded in appropriate books, both of the Council, and of the Trustees, and proper certificates of such records, substantially in the forms aforesaid, shall be made upon

the Deed itself. And the Deed shall then be delivered to the newly appointed Trustee; and such delivery shall operate to invest him with equal rights, as Trustee, with any and all his associate Trustees. And he shall then immediately cause said Deed to be recorded in the Registry of Deeds for the County of Suffolk.

## ARTICLE LII.

1. The regular salaries of the Trustees shall be at the rate of ——— dollars each per annum, payable semi-annually, on the regular dividend days.

2. The regular salaries of the Trustees may be increased, for definite periods, not exceeding five years each, by the votes of not less than four fifths, in number, of all the holders of PRODUCTIVE STOCK, they being, at the time, holders of not less than four fifths, in quantity, of all the PRODUCTIVE STOCK of the Company. The votes, for this purpose, shall be given by the necessary number of Stockholders subscribing, upon some book of the bank; kept by the Trustees, a declaration substantially in the following form, to wit:

“We, the subscribers, being the holders and true owners of the number of shares of the PRODUCTIVE STOCK of the Boston Banking Company, set against our names respectively, hereby give our vote that the regular salaries of each of the three Trustees of said Company be increased, by the sum of one hundred dollars each per annum, for the term of three years, from and after the first day of July, 1861.”

And each subscriber to this declaration shall affix, to his signature, the true date thereof, and the number of shares of PRODUCTIVE STOCK, of which he shall be, at the time, the holder and owner; and shall also designate himself as being either a PRIMARY or *Secondary* holder, as the case may be.

This vote shall be given only at some time within the six months next preceding the day, when the increased salary is to commence.



3. In addition to their regular salaries, each Trustee shall have *five* per centum of all the clear profits of the business done by the Company, (independently of the interest on the mortgages,) the same to be payable only at the same times with the dividends, *of profits*, to the PRIMARY STOCKHOLDERS.

4. Neither the salaries of the Trustees, nor their portion of the profits, shall ever be paid to them, except in the order, relatively to other claims, in which they stand in Article XXIX. And if it shall ever happen that the *entire* PRODUCTIVE STOCK of the Company shall be transferred, from any one body of PRIMARY STOCKHOLDERS, in redemption of the *Circulating Stock*, any arrearages, either of salaries or profits, due, at the time, to any of the Trustees, shall be forfeited by them.\*

5. In case of the death or resignation of a Trustee, or of his removal for any other cause than crime committed in his office of Trustee, his proportion of any accumulated profits shall be paid to him, his heirs, executors, administrators, or assigns, within three months after such death, resignation, or removal. In case of his office ceasing by reason of crime committed by him in his office of Trustee, his proportion of any accumulated profits shall be paid to him, his heirs, executors, administrators, or assigns, within six months thereafter, unless it shall be found necessary or proper to retain them as an indemnity for his crime.

## A R T I C L E   L I I I .

The Trustees may, with the consent of the Council, (or an authorized Committee thereof,) take PRODUCTIVE STOCK, or any other real or personal property, and especially the bills, certifi-

\* This provision is *proper*, because it is proper that the Trustees should have some personal motive to vigilance in the management of the bank. It is also *necessary*, because otherwise the PRODUCTIVE STOCK would pass into the hands of the new body of PRIMARY HOLDERS, subject to an incumbrance, and therefore not at its full nominal value.

cates, or scrip of other banks, in satisfaction of debts due to the Company. And when such stock or other property shall have been taken, it shall, with the consent of the Council (or an authorized Committee thereof) be disposed of, by auction or otherwise, soon as it can be advantageously for the interests of the Company.

#### A R T I C L E   L I V .

If any holder, either PRIMARY or *Secondary*, of PRODUCTIVE STOCK, shall become indebted to the Company, either as principal, or surety, such indebtedness shall operate as a lien upon his PRODUCTIVE STOCK, unless a written contract to the contrary be entered into.

#### A R T I C L E   L V .

The Company may receive the *Circulating Stock* of the Company, on deposit, without interest, and be responsible for its safe keeping; but such Stock shall not be loaned, nor re-issued, by the Company, until it shall have been redeemed.

#### A R T I C L E   L V I .

The Trustees, with the consent of the Council, or an authorized Committee thereof, may allow money and currency, *other than the Circulating Stock of the Company*, to be deposited in the vaults or safes of the Company, without compensation; but they shall not make the Company in any way responsible for its safe keeping; and shall not loan nor re-issue the same, for, or on behalf of, the Company, nor on securities running to the Company.\*

\* The reason for this Article is this. If this system of banking should be generally adopted, the number of banks would be so great, that they would be able to supply all demands for a currency, *without issuing their deposits*. All

## ARTICLE LVII.

Whenever the consent of the Council, or any Committee thereof, shall be necessary to any general, or any particular, action of the Trustees, such consent, if the Trustees require it, shall be expressed by a resolution or memorandum, entered upon the records of the Council, and a certified copy thereof furnished to the Trustees; said certified copy to be written in a book kept by the Trustees, if they shall desire it.

## ARTICLE LVIII.

All holders of PRODUCTIVE STOCK — and also all holders of *Circulating Stock*, which shall have been presented for redemption, and not been redeemed — shall be entitled, at all reasonable times, to all necessary and proper information, from the Trustees, as to the affairs of the Company, and to access to the books of the Company, so far as such access shall be necessary for the purpose of investigating the pecuniary condition of the Company. And all holders, whether PRIMARY or *Secondary*, of PRODUCTIVE STOCK, shall be entitled to a printed copy of the Company's Articles of Association.

## ARTICLE LIX.

The Trustees, with the consent of the Council, or an authorized Committee thereof, may make such contracts with banks and

necessity, therefore, for loaning deposits, will be superseded. By loaning their deposits, the banks would incur a liability to their depositors, which is foreign to the nature of the system, and which, for obvious reasons, ought to be avoided. The power to loan deposits would be practically useless to the banks; because the banks, by reason of their number, would be unable to keep out *all* their own *Circulating Stock*, to say nothing of their deposits.



individuals, for the redemption of the currency of the Company, in such towns and cities, other than Boston, as may be thought expedient, with a view to promote the circulation of the currency.

#### A R T I C L E   L X .

Neither the Trustees, as such, nor the Company, by any of its servants or agents, shall ever contract any indebtedness, except for rents, salaries, and such other necessary and proper expenses, as are necessarily implied in taking care of the Company's capital, and carrying on its business as a Banking Company, in the manner hereinbefore specified.

#### A R T I C L E   L X I .

At such time, on or after the first day of January in the year EIGHTEEN HUNDRED AND EIGHTY, as the Council may appoint, the Trustees shall cease to grant loans, and to issue the *Circulating Stock* of the Company; and shall, as soon thereafter as reasonably may be, collect all debts due the Company; compel payment of the mortgages (having given the holders of the mortgaged estates one year's notice of the demand, and allowing them to offset PRODUCTIVE STOCK in payment of their mortgages, so far as that can be done consistently with justice towards all concerned); redeem all the *Circulating Stock* of the Company; and do whatever may be necessary to close up the affairs of the Company, and dissolve the Company itself. But the mortgages shall not be discharged, nor the Company dissolved, until all the liabilities of the Company shall be cancelled; all its *Circulating Stock* redeemed; all holders of PRODUCTIVE STOCK paid for their Stock; and all certificates of both PRODUCTIVE and *Circulating Stock* cancelled or destroyed.

Provided, however, that if, after the Trustees shall have given due notice to the public to return the *Circulating Stock* of the

Company for redemption, and after ample time shall have elapsed for the purpose of returning such Stock for redemption, any small amounts thereof, not exceeding ———— dollars, in the aggregate, shall still be outstanding, and it shall be believed, by the Trustees, that such *Circulating Stock* shall have been either lost, or destroyed, or that it is not likely soon to be returned for redemption, they shall proceed to dissolve the Company, distribute its capital to the individual owners, reserving in their own hands, out of the funds of the Company, enough gold or silver coin to redeem all the still outstanding *Circulating Stock*. And if such *Circulating Stock*, or any portion thereof, shall be returned to said Trustees for redemption, at any time within three years thereafter, it shall be redeemed by them. But if any portion of said outstanding *Circulating Stock* shall not be returned for redemption within the said three years, it shall be presumed to have been lost or destroyed, and the fund reserved for its redemption shall be paid over to its rightful owners.

IN WITNESS OF ALL WHICH, We, the said F—— F——, G—— G——, H—— H——, and I—— I——, mortgagors aforesaid, and PRIMARY HOLDERS of all the PRODUCTIVE STOCK of said Company, and also we, the said A—— A——, B—— B——, and C—— C——, Trustees hereinbefore named, in token of our acceptance of said trust, have set our hands and seals to nine copies of these Articles of Association (consisting of fifty-nine printed pages) and have also set our names at the bottom of each and all the said fifty-nine pages, this first day of January, in the year Eighteen Hundred and Sixty.

*Nine Copies Signed and Sealed,  
and One Copy Delivered to  
Each of the Parties Signing  
the same, in presence of us.*

A—— D——.  
B—— E——.  
C—— F——.  
D—— G——.

F—— F——. [SEAL.]  
G—— G——. [SEAL.]  
H—— H——. [SEAL.]  
I—— I——. [SEAL.]  
A—— A——. [SEAL.]  
B—— B——. [SEAL.]  
C—— C——. [SEAL.]





# I N D E X

— T O —

## ARTICLES OF ASSOCIATION.

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- ART. 1. Name of Company.
- ART. 2. Place of Business.
- ART. 3. Names of Trustees.
- ART. 4. Capital Stock. Copies of Mortgages.
- ART. 5. Shares \$100 each.—Original owners of the Stock.—  
How the Stock is apportioned among them.
- ART. 6. Productive Stock — entitled to Dividends.
- ART. 7. What the Dividends shall consist of.
- ART. 8. Circulating Stock — amount, &c.
- ART. 9. Circulating Stock — what it is.
- ART. 10. Form of Certificates of Circulating Stock.
- ART. 11. Certificates of Circulating Stock not to exceed  
100,000 Shares.
- ART. 12. Circulating Stock — how issued for Circulation as  
Currency.
- ART. 13. Circulating Stock — how redeemed.
- ART. 14. Original holders of Productive Stock shall be termed  
Primary Stockholders.
- ART. 15. Secondary Stockholders — who shall be so called.
- ART. 16. Dividends to Secondary Stockholders.

- ART. 17. Dividends to Primary Stockholders.
- ART. 18. Productive Stock — how selected — to be transferred in redemption of Circulating Stock.
- ART. 19. Productive Stock, transferred in redemption of Circulating Stock, may be re-purchased by the Company.
- ART. 20. On what terms Productive Stock, transferred and re-purchased, shall be restored to its Primary holders.
- ART. 21. When the *entire* Productive Stock shall have been transferred, in redemption of Circulating Stock, the right to re-purchase shall become extinct, and the Secondary Stockholders become Primary holders.
- ART. 22. Secondary Stockholders, on becoming Primary holders, shall receive no dividends until new certificates shall be issued to them.
- ART. 23. On what conditions the Trustees may accept loans from Primary Stockholders.
- ARTS. 24, 25, and 26. Company may, on certain conditions, elect to pay interest on Circulating Stock, presented for redemption, rather than redeem it on demand.
- ART. 27. How Circulating Stock, in less amounts than \$100, may be redeemed.
- ART. 28. Productive Stock may be re-purchased, and Circulating Stock redeemed, on regular dividend days, without notice, at other times with notice, to holders.
- ART. 29. In what order the resources of the Company shall be applied to the payment of expenses, the redemption of Circulating Stock, the payment of dividends, salaries, &c.

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- ART. 30. Form of "Transfer of Productive Stock, in Redemption of Circulating Stock."
- ART. 31. Form of "Re-conveyance of Productive Stock from a Secondary to a Primary Stockholder."
- ART. 32. Productive Stock, transferred in redemption of Circulating Stock, to be credited, and when re-purchased, to be debited, to the Primary holder.
- ART. 33. Primary Stockholders entitled to Certificates of Productive Stock. — Form of Certificates. — Also, form of "Primary Stockholder's Sale of Productive Stock."
- ART. 34. Secondary Stockholders entitled to Certificates of Productive Stock. — Form of Certificates. — Also, form of "Secondary Stockholder's Sale of Productive Stock."
- ART. 35. Form of "Sale, by a Primary Stockholder, of his Right to Productive Stock, in the hands of a Secondary Stockholder."
- ART. 36. Trustees authorized to pay taxes on the mortgaged estates, keep buildings and fixtures insured. — How insurance money, recovered, may be applied.
- ART. 37. Power of Trustees over the mortgaged estates, when interest, &c., is not paid.
- ART. 38. Terms, on which mortgaged estates may be released from the mortgages.
- ART. 39. Records to be preserved of the particular numbers of any Shares of either Productive or Circulating Stock, that may be cancelled.
- ART. 40. What days shall be dividend days.
- ART. 41. No dividends to be paid, except from interest actually accrued, and *bona fide* profits already realized. — Consent of Council required to the payment of dividends *of profits* to Primary Stockholders.



- ART. 42. Actual payment of no more interest to be required of Primary Stockholders than necessary.
- ART. 43. Accumulated profits may be loaned.
- ART. 44. Notes, &c., not to be transferred, until after they become due, unless with consent of makers and indorsers.
- ART. 45. Councillors — how chosen — their powers, &c.
- ART. 46. Trustees — their powers, duties, &c.
- ART. 47. Trustees to give Bonds. — Form of their Bonds. — How sued on their Bonds.
- ARTS. 48, 49, and 50. How Trustees may forfeit, or be removed from, their offices.
- ART. 51. How vacancies in the office of Trustee may be filled. — Form of "Trust Deed."
- ART. 52. Salaries of Trustees.
- ART. 53. What property may be taken in payment of debts due the Company.
- ART. 54. Indebtedness of holders of Productive Stock shall operate as a lien on their Stock.
- ARTS. 55 and 56. Deposits.
- ART. 57. Consent of Council to acts of Trustees, to be expressed by resolution, or memorandum, &c.
- ART. 58. Stockholders to be entitled to information, and to access to books of the Company.
- ART. 59. Contracts may be made for redemption of the currency at other places than Boston.
- ART. 60. Company to contract no debts, except, &c.
- ART. 61. When and how the Company may be dissolved.











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